

LORI GABBERTY

March 16, 2011

1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOHN KOGUT,

Plaintiff,

VS.

THE COUNTY OF NASSAU, POLICE

COMMISSIONER DONALD KANE,

POLICE COMMISSIONER WILLIAM

J. WILLET (2005), POLICE

COMMISSIONER JAMES LAWRENCE,

DETECTIVE SEAN SPILLANE

(HEAD OF HOMICIDE 1985),

DETECTIVE DENNIS FARRELL

(HEAD OF HOMICIDE 2005),

DETECTIVE JOSEPH VOLPE,

DETECTIVE ROBERT DEMPSEY,

DETECTIVE ALBERT MARTINO,

DETECTIVE WANE BIRDSALL,

DETECTIVE MILTON G. GRUBER,

DETECTIVE CHARLES FRAAS,

DETECTIVE FRANK SIRIANNI,

DETECTIVE HARRY WALTMAN,

P.O., MICHAEL CONNAUGHTON,

P.O., WILLIAM DIEHL and

JOHN DOES 1-5,

Defendants.

(Caption continues on next page.)



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March 16, 2011

2

1  
2 JOHN RESTIVO, DENNIS HALSTEAD, )  
3 MELISSA LULLO, JASON HALSTEAD, )  
4 HEATHER HALSTEAD and TAYLOR )  
5 HALSTEAD, )

6 Plaintiffs, )

7 vs. )

8 ) CV-06-6720

9 NASSAU COUNTY; JOSEPH VOLPE, )  
10 in his individual capacity; )  
11 ROBERT DEMPSEY, in his )  
12 individual capacity; FRANK )  
13 SIRIANNI, in his individual )  
14 capacity; MILTON GRUBER, in )  
15 his individual capacity; HARRY )  
16 WALTMAN, in his individual )  
17 capacity; ALBERT MARTINO, in )  
18 his individual capacity; )  
19 CHARLIE FRAAS, in his )  
20 individual capacity; )  
21 THOMAS ALLEN, in his )  
22 individual capacity; RICHARD )  
23 BRUSA, in his individual )  
24 capacity; VINCENT DONNELLY, )  
25 in his individual capacity; )  
MICHAEL CONNAUGHTON, in his )  
individual capacity; WAYNE )  
BIRDSALL, in his individual )  
capacity; WILLIAM DIEHL, in )  
his individual capacity; )  
JACK SHARKEY, in his )  
individual capacity; DANIEL )  
PERRINO, in his individual )  
capacity; ANTHONY KOZIER, in )  
his individual capacity; )  
DETECTIVE SERGEANT CAMPBELL )  
(SHIELD #48), in his )  
individual capacity; SEAN )  
SPILLANE, in his individual )  
capacity; and RICHARD ROE )  
SUPERVISORS #1-10, in his )  
individual capacity. )

Defendants. )

----- )



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March 16, 2011

3

March 16, 2011

VIDEOTAPED DEPOSITION of LORI GABBERTY, a non-party witness, in the above-entitled matter, held at the offices of Grandinette & Serio LLP, 114 Old Country Road, Mineola, New York, before Helga Christiane Lavan, a Notary Public of the State of New York.



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March 16, 2011

4

A P P E A R A N C E S:

GRANDINETTE & SERIO, LLP  
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114 Old Country Road  
Mineola, New York 11501

BY: ANTHONY GRANDINETTE, ESQ.

NEUFELD, SCHECK & BRUSTIN, LLP  
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Halstead, Melissa Lullo, Jason Halstead,  
Heather Halstead and Taylor Halstead  
99 Hudson Street  
New York, New York 10013

BY: DEBORAH CORNWALL, ESQ.

LORNA B. GOODMAN  
Nassau County Attorney  
One West Street  
Mineola, New York 11501

BY: MICHAEL J. FERGUSON, ESQ.  
Deputy County Attorney  
(Not present)

ALSO PRESENT:

LOUIS FREEMAN, ESQ., Deputy County Attorney

NADJIA LIMANI, Esq.

JORDAN MUMMERT, Videographer



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March 16, 2011

5

1  
2 (Whereupon, Exhibit 258, a copy of  
3 Newsday article, was so marked for  
4 identification.)

5 THE VIDEOGRAPHER: This is tape  
6 number 1 to the videotaped deposition of Lori  
7 Gabberty in the matter of Restivo versus  
8 Nassau County. This deposition is being held  
9 at 114 Old Country Road, suite 420, Mineola,  
10 New York on March 16, 2011 at approximately  
11 10:24 a.m.

12 My name is Jordan Mummert. I'm the  
13 legal videographer. The court reporter is  
14 Helga Lavan.

15 Counsel, will you please introduce  
16 yourself and affiliations.

17 MS. CORNWALL: Debbie Cornwall of  
18 Neufeld, Scheck & Brustin for the Restivo and  
19 Halstead plaintiffs. Good morning.

20 MR. FREEMAN: Louis Freeman  
21 representing the County of Nassau. Also  
22 present in a few minutes will be Nadjia  
23 Limani, an associate in my office.

24 THE VIDEOGRAPHER: The witness may be  
25 sworn in.



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LORI GABBERTY

March 16, 2011

6

Gabberty

Whereupon,

LORI GABBERTY,

after having been first duly sworn, was  
examined and testified as follows:

EXAMINATION BY

MS. CORNWALL:

Q. Would you mind stating your full name  
for the record?

A. Lori Gabberty.

Q. Is that your married name or maiden  
name?

A. Married.

Q. What is your maiden name?

A. Lori French.

Q. Have you ever given testimony under  
oath before?

A. No. I have not.

Q. Let me explain a little bit about the  
process.

You've met the court reporter and the  
videographer. I will be asking some  
questions. If at any time my questions are  
confusing or you don't understand, just let me  
know. For purposes of the transcription, just



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March 16, 2011

7

Gabberty

I would ask you to wait until the question is finished before you answer.

Mr. Freeman will also have the opportunity to ask you questions when I've finished. And from time to time -- this is Ms. Limani entering.

(Whereupon, Ms. Limani enters deposition room.)

From time to time, you may hear one side or the other voicing an objection. Because there is no judge here to make a ruling on the objection, what happens is the objections are preserved for the record. You can go ahead and answer and then a judge will make a ruling at some later date.

If at any time you have questions or you would like to take a break, just let us know. Okay?

THE WITNESS: If you could just -- what is the purpose of a deposition and the use of a deposition?

MS. CORNWALL: Yeah. The purpose of a deposition, the reason why we're here, is to take sworn testimony and preserve it for



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LORI GABBERTY

March 16, 2011

8

1 Gabberty  
2 future use in the context of this lawsuit in  
3 which John Restivo and Dennis Halstead and  
4 John Kogut represented by Tony Grandinette --  
5 who we expect to be arriving -- have alleged  
6 claims against Nassau County and some of its  
7 current and former employees related to their  
8 wrongful conviction and imprisonment for a  
9 crime they did not commit.

10 So with any witness whom either side  
11 believes has any information pertinent to the  
12 case -- witnesses who were interviewed by the  
13 Nassau County authorities years ago in 1984  
14 and 1985 -- either side has the opportunity to  
15 take depositions and preserve testimony for  
16 the record for purposes of proving claims or  
17 defenses. And you will also receive a copy of  
18 your transcript when it's prepared. All  
19 right?

20 THE WITNESS: Thank you.

21 Q. Okay. I would like to just ask some  
22 very general questions about you before we get  
23 into your memory of events of many years ago.

24 What town do you live in?

25 A. Today?



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LORI GABBERTY

March 16, 2011

9

Gabberty

Q. Yes.

A. Bellmore.

Q. And do you live alone?

A. No.

Q. Who do you live with?

A. My husband and my children.

Q. Do you work?

A. Yes.

Q. What do you do for a living?

A. I am in sales and marketing.

Q. Does your work require you to travel  
out of state?

A. Yes.

Q. In fact, we had previously scheduled  
a deposition which you were unable to attend  
because your work took you out of state?

A. Correct.

Q. Turning back to November of 1984,  
were you then Lori French?

A. Yes.

Q. Not yet married?

A. Correct.

Q. How old were you in November of 1984?

A. You want me to do math?



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LORI GABBERTY

March 16, 2011

10

Gabberty

Q. Or you could just let me know the month and year of your birth.

A. March '68.

Q. So we could do the math together. That would make you about 16?

A. Correct.

Q. All right. And at that time where were you living?

A. Malverne.

Q. Who were you living with in Malverne?

A. My mother and my siblings.

Q. Who were your siblings -- excuse me. Who are your siblings?

A. They still are. John and Lisa.

Q. Where did you fall in the birth order?

A. The youngest.

Q. So John was your older brother?

A. Correct.

Q. How old was he in November of 1984?

A. I can ask questions as we go through, right? What does the age of my family --

Q. I'm just asking how old your brother was since I'll be asking you questions about



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LORI GABBERTY

March 16, 2011

11

1 Gabberty  
2 his car and it being stolen and found again.  
3 And that is the general subject matter why  
4 we've sought your testimony today.

5 A. Okay. Well, he was born in '63.

6 Q. So about five years older than you?

7 A. Correct.

8 Q. Which would make him about 21 in  
9 November of 1984?

10 A. Correct.

11 Q. Okay. In November of 1984, did your  
12 brother John own a car?

13 A. Yes, he did.

14 Q. What kind of car was it?

15 A. I don't recall the make and model.

16 Q. I would like to show you what has  
17 previously been marked as Exhibit 169. It's a  
18 collection of photographs. I would ask you to  
19 look at the first page which you put an A on  
20 the bottom to indicate the different pictures.  
21 Do you recognize that vehicle?

22 A. That looks similar to his car. I  
23 can't say for sure.

24 Q. It looks similar to your brother  
25 John's car as of 1984?



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LORI GABBERTY

March 16, 2011

12

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A. Right. It was over 25 years ago.

Q. Of course. Of course.

When did he buy the car?

A. I don't recall.

Q. Do you recall whether he took good care of the car?

A. Yes. He did.

Q. How do you know that?

A. Because he takes good care of everything. And he's just very caring of his stuff.

Q. So, for example, was it his practice to keep trash inside of the car?

A. No.

Q. Would it have been his practice to drive around with a cracked windshield?

A. Not that I think he would. There was a cost associated to fixing that. So I can't say for sure.

Q. Was John working in November 1984?

A. I believe he was.

Q. Do you know what he was doing for a living at that time?

A. I can't recall.



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March 16, 2011

13

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Q. In November of 1984 did there come a time when you learned something had happened to John's car?

A. Could you restate the question?

Q. Did something happen to John's car in approximately November of '84?

A. I can't say November. His car was stolen. I don't recall the date or month.

Q. How did you find out his car had been stolen?

A. He came home and was very upset.

Q. What did he say?

A. I can't say verbatim what he said. But the essence was, "My car was stolen."

Q. Do you know what if anything he did when he found out his car had been stolen?

A. He called the police.

Q. Which police did he call?

A. I don't know. Whatever the emergency number, I guess, would be at that time.

Q. Did he tell you where his car had been parked when it was stolen?

A. No.

Q. Did he tell you who he had been with



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LORI GABBERTY

March 16, 2011

14

1 Gabberty  
2 just before the car had been stolen?

3 A. Not that I remember.

4 Q. I would like to show you a copy of  
5 what has previously been marked Exhibit 166  
6 and ask you to turn to the second page of the  
7 exhibit. And we'll give you copies of all the  
8 exhibits as well, if you would like.

9 A. Turn to which page?

10 Q. The second page.

11 A. Second page. Okay.

12 MR. FREEMAN: Would you identify the  
13 document?

14 MS. CORNWALL: Yes. The Exhibit 166  
15 includes, on the first page, a case report,  
16 County of Nassau, New York Vehicle/Boat  
17 Recovery Report. The second page, which I had  
18 asked Lori Gabberty to look at, is a  
19 supporting deposition. And the third page is  
20 a case report marked "closed."

21 Q. And turning your attention to the  
22 second page, this is a report of a missing  
23 car. And I would like you to look at the  
24 bottom of page -- do you see a signature at  
25 the bottom there, right?



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LORI GABBERTY

March 16, 2011

15

Gabberty

A. Uh-huh.

Q. Do you recognize that as the signature of your brother John?

A. I'm not a signature expert.

Q. I'm not asking if you're an expert. But --

A. In my opinion, it looks like it's his signature.

Q. Thank you. Do you see the date on this report?

A. Where would you find that?

Q. On the lower left.

A. Lower left. Yes. I see the date.

Q. November 10th of 1984, late in the evening. Where it says time 23:25, in military time, would be 11:25 p.m.

A. Okay.

Q. Does that refresh your memory at all of when your brother's car was stolen?

A. No.

Q. Other than calling the police and reporting that his car had been stolen, to your knowledge did your brother do anything else to try and find the car?



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LORI GABBERTY

March 16, 2011

16

Gabberty

A. Did he do anything else. Not that night. At least not to my knowledge. But he would seek any available friends to drive around and try and find it.

Q. Do you know who he drove around with specifically to try and find the car?

A. No.

Q. Did he find the car that way?

A. I'm not sure if he found it or if someone else found it and called him. But it was found.

Q. About how long was it between the time that he realized it was stolen and the time he found it?

A. I don't know.

Q. Where did he find the car -- withdrawn. Let me rephrase that question.

When -- withdrawn.

Did he tell you the car had been found?

A. Yes.

Q. What did you do?

A. I believe I'm the one who took him to the car.



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LORI GABBERTY

March 16, 2011

17

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Q. So when you say you took him to the car, did you have a car at that time?

A. Yes, I did.

Q. Did you drive him in your car to pick up his car?

A. Yes.

Q. Where did you drive him to to pick up the car?

A. In Lakeview.

Q. Can you recall any more specifically where in Lakeview you found the car?

A. I don't recall the name of the road. Even to today, I'm not good with names.

Q. Me neither.

A. But it was kind of off the shoulder of the road in, like, a dirt area.

Q. Please take a look at the photographs again in Exhibit 169. And page forward to page E. Do you recognize that area?

A. That could be. It could be.

Q. It could be the place where you brought your brother John to pick up his car?

A. It could be. I can't say for certain.



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LORI GABBERTY

March 16, 2011

18

1 Gabberty

2 Q. It's been a long time.

3 A. It sure has. This is an odd angle.

4 Q. Yeah.

5 Please turn to the next photograph.

6 There are a couple of other angles.

7 Do you recognize this location  
8 depicting a railroad crossing and a dirt area  
9 off the road?

10 A. Kind of. Again, I can't say for  
11 certain.

12 Q. Could that also be another view of  
13 the location --

14 A. Could be.

15 Q. -- where you brought John to pick up  
16 his car?

17 Turning to photograph G, the next one  
18 in the sequence.

19 A. This looks to be a little bit more  
20 familiar on that angle. But, again, I can't  
21 say with complete certainty. It's a long time  
22 ago.

23 Q. Yes.

24 How about photograph H?

25 A. Same comment. Looks familiar. But I



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LORI GABBERTY

March 16, 2011

19

1 Gabberty

2 can't say for certain.

3 Q. And finally, photograph I.

4 A. Same comment.

5 Q. All right. Thank you.

6 What happened once you drove your  
7 brother John to the dirt area off the side of  
8 the road in Lakeville to pick up his car?

9 A. We took it to the police station.

10 Q. When you say "we took it," did he  
11 drive his car and you drove --

12 A. Correct.

13 Q. -- yours?

14 All right.

15 Did you and John take a look at the  
16 car inside and out before you got --

17 A. Yes.

18 Q. -- to the police station?

19 And what did you see?

20 A. It was -- I don't know how long it's  
21 been there. But it was clean. It wasn't  
22 dirty. But it was vandalized.

23 Q. What makes you say it was vandalized?  
24 How was it vandalized?

25 A. Again, I can't recall with certainty.



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LORI GABBERTY

March 16, 2011

20

Gabberty

But I remember there being damage to the dashboard, the windshield. That front area.

Q. Did you find -- withdrawn.

Did you look inside the car as well?

A. Uh-huh.

Q. Did you find anything in the car that didn't seem to belong there?

A. Again, the car was clean except for a pair of pants.

Q. And could you please describe the pair of pants you found?

A. They were stretchy pants, like blue jeans, stretchy pants.

Q. Other than stretchy, was there anything distinguishing about those blue-jean pants?

A. No. Other than one leg was inside out, I believe. It was only one leg.

Q. Do you recall seeing stripes on those jeans?

A. There may have been stripes -- and I can't say with certainty. I'm going from a 25-plus year memory. A lot of pair of pants, a lot of kids.



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LORI GABBERTY

March 16, 2011

21

1 Gabberty

2 I think the inside had stripes. Not  
3 the outside.

4 Q. What was your reaction when you  
5 found -- well, sorry. Withdrawn.

6 Were these girls striped jeans or  
7 boys, if you could tell?

8 A. I would say they're more girls.

9 Q. What was your reaction when you found  
10 these inside-out striped blue jeans in the  
11 car?

12 A. It was odd. They weren't ours.

13 Q. So what if anything did you do next?

14 A. Once we got to the police station we  
15 brought them in as well.

16 Q. Who did you speak to if you can  
17 recall?

18 A. Whoever was at the front desk.

19 Q. And did you give those jeans to the  
20 person in the police department?

21 A. Yes, we did.

22 (Whereupon, Anthony Grandinette  
23 entered the deposition room.)

24 Q. To the best of your memory, what did  
25 you say and what was said to you?



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LORI GABBERTY

March 16, 2011

22

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A. Again, I can't say verbatim. But the essence was, these were in the car. They're not ours. And so they took them.

Q. Did you see where they put those jeans when you handed them over?

A. I don't know what they did with them.

THE WITNESS: Sorry. Are you Tony?

MR. GRANDINETTE: Yes I am. How are you?

THE WITNESS: Good. And you?

MR. GRANDINETTE: Good. Thank you.

THE WITNESS: Sorry, Debbie.

MS. CORNWALL: No. That's okay.

Mr. Grandinette has come in.

BY MS. CORNWALL:

Q. What happened next after you and your brother John went to the police station, told them the car had been found and gave them the jeans?

A. We took the car home.

Q. Did there come a time after you got home that day or evening that you realized something else was amiss with your brother's car?



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March 16, 2011

23

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A. I didn't realize. I don't think my brother realized. I think it was the guy down the block -- I can't say for certain, again -- who noticed the plates were different.

Q. That the plates registered to your brother John's car were not on the car, somebody else's plates were on it?

A. Correct.

Q. So what did you do when you learned that the wrong plates were on the car?

A. Brought the car back to the police.

Q. What happened when you got to the police station?

A. They took the plates.

Q. Did they have your brother's plates to give you?

A. No, they did not.

Q. Did they tell you or your brother anything about whose plates had been on the car?

A. No. Not at that time.

Q. Did there come a time when your brother John got his plates back?

A. I don't know.



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March 16, 2011

24

Gabberty

Q. As you sit here now so many years later, you don't remember the license plate number; did you?

A. As a matter of fact, when I pulled in, I had to have the front guy tell me what my plate was. So no.

Q. So that's a no. Okay. Fair enough.

After turning in the wrong plates that day, did you hear back from the Lynbrook Police Department again?

A. I'm not associated with the theft of the car. So they would have contacted my brother. I have no idea.

Q. Did there come a time when your brother cleaned and repaired the car after what you've just described?

A. Yes.

Q. Fair to say that was within the next week or two after finding it?

A. I would say that's probably right.

Q. Did there come a time later in 1984 when you and your brother were contacted by police regarding the car?

A. Yes.



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LORI GABBERTY

March 16, 2011

25

1 Gabberty

2 Q. About how much later was it after you  
3 found the car?

4 A. I have no idea. I'm trying to think  
5 if the house was decorated for Christmas. I  
6 don't think it was. So it was probably before  
7 Christmas.

8 Q. Were you aware in late 1984 that a  
9 teen-age girl named Theresa Fusco had been  
10 missing?

11 A. I believe I found out after.

12 Q. After?

13 A. After the car was returned and -- I  
14 don't know if it was late '84 or '85. But I  
15 did become aware.

16 Q. Do you know how you became aware?

17 A. I don't. Possibly signs, I think,  
18 were around.

19 Q. Showing you what has previously been  
20 marked as Exhibit 168.

21 A. This looks familiar.

22 Q. So you have a memory of having seen  
23 the missing poster describing Theresa Fusco at  
24 some point?

25 A. At some point. Yes.



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March 16, 2011

26

Gabberty

Q. Do you know if, when you found the striped blue jeans in your brother's car, you made the connection that might have something to do with Theresa Fusco?

A. I don't recall when I made the connection. It could have been when the police came to the house or the detectives came to the house.

Q. Now, you say detectives came to the house. How many detectives came?

A. I don't recall. More than one.

Q. Were they in uniform or plain clothes?

A. I'm not sure. If I had to guess, suits.

Q. What did they say to you and your brother?

A. The conversation was not directed to me. So I don't know what they said or -- it was probably my brother or my mother.

Q. Where were they in the house during this conversation between the detectives and your brother?

A. Dining room.



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27

Gabberty

Q. Sorry?

A. Dining room.

Q. Were you also there in the dining room?

A. I eventually was.

Q. Did you hear the conversation between the detectives and your brother about his car?

A. Part of it. I mean, I remember, more so, questions that came to me.

Q. What were the questions that came to you?

A. Questions about the jeans.

Q. What were you asked by the Nassau County detectives about the jeans?

A. Again, just going by memory. So I'll give you the essence of what was asked.

I recall questions about the jeans. "What did they look like?" They had sample jeans for me to look at and comment on, which ones look like the ones that I found.

Q. So did you describe the jeans you had found in your brother John's car before they showed you any samples?

A. Yes.



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28

Gabberty

Q. And how many samples of jeans did they show you?

A. I would have to guess.

Q. Was it more than one pair?

A. I believe it was.

Q. And --

A. And again, I'm guessing.

Q. So it may have been more than one pair, it may have been only one pair?

A. Right.

Q. Did any of the samples of jeans the Nassau County detectives showed you look like the same type of jeans you found in the car?

A. I don't recall.

Q. Did you tell the Nassau County detectives that any of the samples of jeans they showed you did look like the same type you had found in the car?

A. I don't recall. I mean, I remember describing them. We described them first. And I don't remember if there was one that was a very close match or not.

Q. What else, if anything, did the Nassau County detectives talk to you about



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29

Gabberty

that day?

A. For me, it was really just asking me questions about the jeans.

Q. What other questions did they ask you about the jeans?

A. Other than describing them. You know, and then asking questions on my description of them to get more granular. That was really it, that I recall.

Q. The jeans you found in the car, did you see any blood on them?

A. No.

Q. Any other stains?

A. No.

Q. Were they ripped?

A. No.

Q. Just partially inside out?

A. Yeah. I recall one leg was inside out.

Q. When you found the jeans, where in the car were they?

A. Back seat.

Q. On the back seat or under the back seat?



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March 16, 2011

30

Gabberty

A. On the back seat.

Q. Did there come a time when Nassau County police took hair samples --

A. Yes.

Q. -- from you?

A. Uh-huh.

Q. And your brother John?

A. Uh-huh.

Q. And other members of your family who had been in the car?

A. Yes.

Q. Did they explain why?

A. Yes.

Q. What did they tell you?

A. They were going to take the car and, I guess, look at everything in the car and they needed to rule out anything that they found that matched us.

Q. Did they tell you why they wanted to take the car and why they were asking you so many questions about the jeans?

A. I don't know if they said it or if I put two and two together. But I think it was all about Theresa Fusco.



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31

Gabberty

Q. Did you know Theresa Fusco, by the way?

A. Nope.

Q. To your knowledge, did your brother?

A. Nope.

Q. Were the hair samples taken at that first visit by Nassau County authorities or did that come sometime later?

A. I believe it was on that visit.

MR. FREEMAN: I didn't hear that. I believe it was --

THE WITNESS: On that visit.

MR. FREEMAN: Thank you.

Q. Did the Nassau County authorities also ask about other people aside from your family who spent time in John's car?

A. I think they might have. But not to me.

Q. To your knowledge, did Nassau County authorities take hair samples from anyone outside your family to compare the hairs from the car?

A. I believe they did.

Q. Showing you what's previously been



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32

1 Gabberty  
2 marked Exhibit 164, a document provided to us  
3 from Nassau County from the original  
4 investigation, which says it's a list of  
5 people who had been in the car, your brother  
6 John's car. Did you know Dave Washington?

7 A. The name doesn't sound familiar.

8 Q. Did you know Michael Becht?

9 A. Yes.

10 Q. Did you know if Nassau County  
11 authorities took hair samples from him?

12 A. I have no idea.

13 Q. Do you know if Nassau County ever  
14 spoke to him?

15 A. I have no idea.

16 Q. Do you know Michael Wren?

17 A. Yes.

18 Q. Do you know if Nassau County ever  
19 took hair samples from him?

20 A. I have no idea.

21 Q. Do you have any idea if Nassau County  
22 authorities ever spoke to him?

23 A. I have no idea.

24 Q. Do you know John Redlefsen?

25 A. Yes, I do.



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33

1 Gabberty

2 Q. Do you know -- same question -- if  
3 they ever took hair from him?

4 A. I don't know.

5 Q. Or if they ever spoke to him?

6 A. I don't know. These are my brother's  
7 friends. So...

8 Q. How about Maggie Scalpelli?

9 A. Same goes for -- I have no idea if  
10 they gave hair samples.

11 Q. Or were ever interviewed?

12 A. Exactly.

13 Q. How about Susan Knipe?

14 A. Same.

15 Q. Jackie Donovan?

16 A. Same.

17 Q. Thomas Glasser?

18 A. Same.

19 Q. Jennifer Cone?

20 A. Same.

21 Q. And did you know each of those people  
22 as well?

23 A. I know these folks.

24 Q. And your brother's friends?

25 A. Yes.



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34

1 Gabberty

2 Q. Are you in touch with any of them  
3 now?

4 A. Nope.

5 Q. To your knowledge, is your brother in  
6 touch with any of them now?

7 A. Yes. Some of them.

8 Q. To your knowledge has anyone --

9 A. Some have passed away.

10 Q. Who has passed away on this list?

11 A. Jackie Donovan. She was in the twin  
12 towers. Thomas Keena. And that's all that I  
13 know on this list.

14 Q. To your knowledge, have any of the  
15 surviving people on this list in Exhibit 164  
16 been contacted since 1984 or '85 by anyone in  
17 Nassau County on behalf of Nassau County in  
18 connection with this lawsuit?

19 A. I have no idea.

20 Q. Did there come a time when Nassau  
21 County authorities did take in the car for  
22 processing?

23 A. I'm sorry. Could you repeat the  
24 question?

25 Q. Did Nassau County police take the car



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35

1 Gabberty

2 to inspect it?

3 A. Well, whoever was there that day,  
4 they took it. I don't know if the detectives  
5 are part of Nassau County police. Are they?

6 Q. Yes.

7 A. Then yes.

8 Q. Did there come a time when the car  
9 was returned to your brother?

10 A. Yes.

11 Q. How long did Nassau County police  
12 keep the car before they returned it, if you  
13 recall?

14 A. I don't recall. I don't know.

15 Q. Did Nassau County police ever contact  
16 you again in 1984 or 1985 about either the car  
17 or the jeans?

18 A. Not that I recall.

19 Q. Did any lawyer or investigator for  
20 John Restivo or John Kogut or Dennis Halstead  
21 ever contact you between 1984 and 1986 about  
22 your brother's car or the jeans that you found  
23 in it?

24 A. No.

25 Q. Did you ever talk to any district



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36

1 Gabberty  
2 attorney between 1984 and 1986 about your  
3 brother's car or the jeans that you found?

4 A. No. Not that I recall.

5 Q. What's the next time anyone contacted  
6 you on behalf of Nassau County in relation to  
7 the car and the jeans that you found?

8 A. On behalf of Nassau County?

9 Q. Yes. Turning your attention, if it  
10 will help your memory, to late last year,  
11 November or December of last year.

12 A. Late last year? I'm trying to think  
13 of the timing. If it was late last year or  
14 January.

15 Q. Within the last six months, have you  
16 been contacted by someone who told you they  
17 were working for Nassau County?

18 A. Yes.

19 Q. How many people?

20 A. One.

21 Q. Male or female?

22 A. Male.

23 Q. Was he a Nassau County detective?

24 A. I think so.

25 Q. Do you recall his name?



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37

1 Gabberty

2 A. I have it written down, but  
3 unfortunately at home.

4 Q. Was it a Detective Hillman?

5 A. It's not sounding familiar. But I  
6 could be wrong.

7 I wrote it down. It was a very quick  
8 conversation and I jotted it down on a piece  
9 of paper at home.

10 Q. Could it have been a Detective  
11 Goldman?

12 A. That sounds more familiar.

13 Q. Where did that meeting take place, or  
14 was it a meeting?

15 A. We met for about five minutes at a  
16 diner.

17 Q. Did the detective ask you questions?

18 A. A few.

19 Q. What did he ask?

20 A. See why I need notes?

21 Q. To the best of your memory.

22 A. I would be guessing. I think he just  
23 asked me if I had recalled finding pants.

24 Q. And did you essentially tell him what  
25 you've told us today?



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38

1 Gabberty

2 A. Not as much. These are much more  
3 questions.

4 Q. You said your meeting with him was  
5 for about five minutes?

6 A. Yeah. It was very brief.

7 Q. How was the meeting set up?

8 A. He called.

9 Q. And how did he explain the reason for  
10 his call?

11 A. I think very similar to when Mary  
12 called me.

13 Q. Was it your understanding that the  
14 detective was investigating the rape and  
15 murder of Theresa Fusco?

16 A. Yes. That was my impression.

17 Q. And you mentioned that no one else  
18 was with the detective when you met for those  
19 five minutes?

20 A. No.

21 Q. Did you have contact with anyone else  
22 on behalf of Nassau County or Nassau County  
23 police since that meeting?

24 A. Nope.

25 Q. And to the best of your memory, that



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39

1 Gabberty  
2 was either late last year, probably in January  
3 of this year?

4 A. Yeah. I would have to go back and  
5 check my piece of paper.

6 Q. But you've made a note of the  
7 detective's name at the time?

8 A. Yes.

9 Q. To your knowledge, did any Nassau  
10 detective -- whether the one who met with you  
11 or any other -- also meet with your brother  
12 John?

13 A. I don't know.

14 Q. To your knowledge did any Nassau  
15 County detective or anyone else talk to your  
16 brother John about these issues?

17 A. I don't know.

18 Q. Have you talked to your brother John  
19 about your coming to testify today?

20 A. I'm trying to think. I just saw him  
21 the other day at my mother's house and I think  
22 I may have told him I'm going in for a  
23 deposition. And that was it.

24 Q. Has he told you whether he's been  
25 contacted by anybody?



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40

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A. No.

Q. Obviously, a number of the questions I asked you would be better directed to him. Where does he live now?

A. In Lynbrook.

Q. What's his address in Lynbrook?

A. I would have to check.

Q. Would you mind?

A. If I have my address book. Otherwise, I would have to get back to you. He's around the corner. And as I said before with street names...

Q. Sure.

A. I do not have my address book with me. So I can give it to you later today.

Q. Okay. That would be fine. And we'll leave open a space in the deposition to fill that in.

What we will do after the close of the deposition, when we get the transcript, is we'll send you a copy and you'll have an opportunity to go through it and make sure it's an accurate transcription of what you said, make any changes, insert that



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41

1 Gabberty  
2 information in there and send it back once  
3 you're confident that it's accurate.  
4

5  
6 Do you have your brother's number?

7 A. That would also be in my address  
8 book.

9 Q. Is it in your cell phone, by any  
10 chance?

11 A. Am I supposed to be giving phone  
12 numbers and addresses?

13 Q. It's part of our discovery process to  
14 try to talk to each witness who had contact  
15 with the police about this case.

16 A. But I just feel a little  
17 uncomfortable to give information other than  
18 myself. I mean, you guys found me. I'm sure  
19 you probably have this already.

20 Q. I don't. Otherwise I wouldn't be  
21 asking.

22 A. Again, I don't know what -- I get  
23 very uncomfortable giving personal information  
24 about other people.

25 MR. FREEMAN: I believe the decision



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March 16, 2011

42

1 Gabberty

2 is yours to make.

3 A. I mean, I would rather ask him if  
4 it's okay if I can give it to you.

5 Q. So why don't we do this? I would  
6 appreciate if you would get back to me with  
7 his address, as you've indicated, and feel  
8 free to let him know that we would like to  
9 speak to him as well. I would appreciate it.  
10 Thank you.

11 When you met with the Nassau County  
12 detective either late last year or in January,  
13 did he lead you to believe that one of the  
14 three plaintiffs in this case, John Kogut,  
15 Dennis Halstead or John Restivo, was in jail?

16 A. I don't recall.

17 Q. Did you have an understanding that  
18 one of them is in jail?

19 A. There was an article that came out.  
20 I think it was Newsday, a couple of pages.  
21 Right prior to you and I meeting. And I  
22 believe there might have been some reference  
23 in there. But I can't recall.

24 Q. Other than reading the article in the  
25 Newsday in December of last year and --



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March 16, 2011

43

Gabberty

MR. FREEMAN: Objection to the form of the question.

Q. -- the meeting with me and your meeting with the Nassau County police detective, do you have any other source of knowledge about John Kogut, Dennis Halstead or John Restivo?

A. No.

Q. I'll just show you what we have marked as Exhibit 258. I'll give you the original and then you can keep the copy.

A. So after we met you went and pulled the article that I referenced?

Q. Is this article from Newsday.com entitled, "Decades later still a mystery in Lynbrook," dated December 25th of 2010, the article you were referring to?

A. I think so. I thought it had more pictures.

Q. Did you read it online or in print?

A. In print.

Q. Would you mind just taking a read through it --

A. Prior to this, I did not even know



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March 16, 2011

44

1 Gabberty

2 these guys' names.

3 Q. When you say, "Prior to this," prior  
4 to --

5 A. My conversation with Mary and then  
6 this article.

7 MR. FREEMAN: Could we identify Mary  
8 for the record?

9 MS. CORNWALL: Mary Schembri. Yes.

10 Q. So would you mind just reading  
11 through the article again and telling me  
12 whether there's anything in the article  
13 suggesting that John Kogut or John Restivo or  
14 Dennis Halstead is in prison?

15 (Witness complies.)

16 THE WITNESS: So what was your  
17 question?

18 Q. The question is did you see anything  
19 in that article which you had read reflecting  
20 that either John Kogut or Dennis Halstead or  
21 John Restivo was then in jail?

22 A. Well, they, all three of them, went  
23 to jail.

24 Q. Aside from the Fusco imprisonment,  
25 for which the article indicates they were



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LORI GABBERTY

March 16, 2011

45

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25

Gabberty

released in 2003, does the article suggest that as of the time of printing, any of those three men was in jail?

A. Right now.

Q. As of December 25, 2010.

A. No. That's not the impression I got here.

Q. So is it possible that it was the Nassau County police detective who told you that?

A. Why is one in jail?

Q. You mentioned earlier the meeting that I had with you. And that was in January?

A. Uh-huh.

Q. Do you recall at that time you mentioned that you believed that one of those three men was in jail?

A. I think I was inquiring, actually, about all three, to understand where they were now.

Q. And --

A. This article really -- I think we had a conversation about me being the mother of a daughter and this article was concerning.



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March 16, 2011

46

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Q. And do you recall that you also indicated your belief that one of the three plaintiffs had been arrested for something else separate from the Fusco matter and was in jail?

A. I don't know if it was my belief or if I asked. And I believe you confirmed.

Q. Did you form an opinion about one of the plaintiffs based on your understanding of why he was in jail?

A. Did I form an opinion -- I don't understand the question.

Q. Do you recall saying something to the effect of you're not interested in helping someone who would be in jail for whatever it was you believed he was in jail for?

A. No. I did not say "I'm not interested in helping someone."

Q. When we met in January, did you also describe your interaction with Nassau County detectives regarding the jeans?

A. Did I describe my interaction -- yes. When he dropped them off.

Q. And did you and I also discuss at our



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47

1 Gabberty  
2 meeting in January the conversation you had  
3 with Nassau County detectives when they came  
4 to your house sometime later in '84?

5 A. Did -- not really. Because I don't  
6 recall the conversation I had with them other  
7 than describing the jeans and then taking hair  
8 samples.

9 Q. Do you recall telling me that Nassau  
10 County detectives showed you a sample pair of  
11 jeans?

12 A. I may have said that.

13 Q. And do you recall telling me that you  
14 told them that the pair is the same kind of  
15 jeans but not the precise pair you had found?

16 A. I don't recall saying that.

17 Q. And as you sit here today, you're  
18 just not sure one way or the other whether you  
19 did tell Nassau County detectives in 1984 that  
20 you recognized the type of jeans they showed  
21 you?

22 A. Yes, I'm not sure. It was a long  
23 time ago. I can describe the jeans, as I did  
24 in your earlier question. That they were blue  
25 jeans, stretchy, one leg I recall being inside



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LORI GABBERTY

March 16, 2011

48

1 Gabberty

2 out. Hence, I remember the inside pattern  
3 having stripes. As far as the pants that they  
4 showed me, I don't recall how closely any of  
5 them, if there was more than one, resembled  
6 the exact jeans.

7 Q. Did they tell you where they had  
8 gotten the sample --

9 A. No, they did not.

10 Q. -- or samples?

11 Do you recall the names of the  
12 detectives who came to the house and asked you  
13 about the jeans?

14 A. I don't.

15 Q. Did they leave a card or give you a  
16 copy of any documentation?

17 A. They could have. Again, this was my  
18 brother's car. So the conversation was mainly  
19 with my brother, and I'm sure my mother, at  
20 the time.

21 Q. So again, is it fair to say that  
22 between December of 1984 or whenever the  
23 detectives came to your house to ask about the  
24 jeans and take hair samples and late last year  
25 in December of 2010, you had no contact with



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LORI GABBERTY

March 16, 2011

49

1 Gabberty

2 anybody about the jeans or the fact that the  
3 car was stolen?

4 A. Other than Mary called -- I don't  
5 remember the dates when Mary called. We spoke  
6 a couple of times on the phone.

7 MS. CORNWALL: I have nothing further  
8 at this time.

9 Mr. Freeman may have some questions  
10 and when he's finished I may have a couple of  
11 questions to follow up.

12 MR. FREEMAN: I just need a short  
13 break. Very short. Are you asking?

14 MR. GRANDINETTE: No.

15 MR. FREEMAN: Could we take a five  
16 minute break, please?

17 THE VIDEOGRAPHER: Time is 11:15.  
18 We're off the record.

19 (Recess taken.)

20 THE VIDEOGRAPHER: Time is 11:20.  
21 We're on the record.

22 EXAMINATION BY

23 MR. FREEMAN:

24 Q. Good morning, again. My name is  
25 Louis Freeman and I represent Nassau County in



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March 16, 2011

50

1 Gabberty  
2 this lawsuit. And the same instructions  
3 apply. If you have a question, need  
4 clarification, just ask. If you need a break  
5 or you want to stop for any reason, just let  
6 us know and we'll accommodate you.

7 When you looked at the picture that  
8 you were shown of a car -- I think it was  
9 169 -- you said you weren't sure that that was  
10 the exact car; is that correct?

11 A. Right. I mean, it looks -- looks  
12 familiar. But it was a long time ago. It  
13 wasn't my car.

14 Q. So during the questioning by  
15 plaintiff's counsel, you talked about a car  
16 being stolen and you talked about going to the  
17 police department. Is this the car or are you  
18 not sure this is the car? In other words, are  
19 we talking about this car or are we just  
20 assuming that this is the car that --

21 A. A car that looked like this. I can't  
22 say with certainty because I don't know what  
23 his license plate was.

24 Q. And I have a question regarding your  
25 ability to drive at 16. In 1984, I assume you



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LORI GABBERTY

March 16, 2011

51

1 Gabberty  
2 had taken drivers ed. and you were able to get  
3 a license at 16?

4 A. And get insured. I had my own car.

5 Q. You said that. So there was no bar  
6 to your driving alone in 1984 or '85 at the  
7 age of 16; correct?

8 A. Not to my knowledge.

9 Q. And you recall driving to the police  
10 station with your brother, you think you're  
11 the one that drove him?

12 A. Yes.

13 Q. Because he was careless at that  
14 point; correct?

15 A. No. I followed him. Drove him to  
16 his car.

17 Q. In Lakeview.

18 A. Right.

19 Q. And then did you go right to the  
20 police department?

21 A. Yes.

22 Q. So was he able to drive his car at  
23 that point?

24 A. Yes.

25 Q. Do you recall there being a problem



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LORI GABBERTY

March 16, 2011

52

1 Gabberty  
2 with the steering column?

3 A. I don't know. I didn't drive the  
4 car.

5 Q. But you recall following him and him  
6 driving his car to the police station?

7 A. Yes. It was drivable.

8 Q. When you went to the police station,  
9 was that a police station that you were  
10 familiar with?

11 A. No.

12 Q. Did you know -- previous to that day,  
13 whatever day that was, had you been to that  
14 police station?

15 A. Not that I recall.

16 Q. Do you recall today where it was  
17 generally?

18 A. In Lynbrook.

19 Q. But where in Lynbrook?

20 A. Right off the Merrick Road. I don't  
21 think it was too far from the movie theater,  
22 if I recall.

23 Q. Is that a precinct house, a  
24 freestanding building?

25 A. Yes.



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March 16, 2011

53

Gabberty

Q. And was the first time you went to the Lynbrook police station, the time that you turned in the jeans?

A. Yes.

Q. You said that you encountered somebody when you walked in sitting behind a desk or maybe a raised platform; does that sound right?

A. Right. There was a raised platform.

Q. Did this person, if you recall, act professionally?

A. Yeah. What you would expect going into the precinct.

Q. And you described the jeans that you found as stretchy. And you seemed to have a distinct recollection that they were stretchy.

A. Yes.

Q. Now, when you say "stretchy," you mean that the fabric would give? You could actually stretch the fabric?

A. Yes.

Q. I know that there are jeans that exist today that have a cotton in the fabric and also some stretchy material that would



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LORI GABBERTY

March 16, 2011

54

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Gabberty

allow you to, like, pull the jeans so that they give and that makes them easier to get on; correct?

A. Or makes them fitted.

Q. I was going to say or allows them to be form-fitted; correct?

A. Right.

Q. Your recollection is that these jeans were like that?

A. Yes. They were very popular at the time.

Q. You also said, you described them as blue jeans; correct?

A. Yes.

Q. Meaning --

A. Color.

Q. It's going to sound silly, but --

A. Meaning the color.

Q. Just blue jeans, meaning the color? You weren't using that as a description of a kind of jeans?

A. Correct.

Q. Just color blue, stretchy material?

A. Right. Denim.



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March 16, 2011

55

Gabberty

Q. Pardon?

A. Denim. That's how I described them.

Q. And you also said that one leg was inside out?

A. That's what I recall.

Q. And I'll say again, that seems to be a fairly distinct recollection?

A. Yes.

Q. You also testified that the stripes that you saw were on the inside of the fabric.

A. Yes.

Q. Do you recall whether there were any stripes on the outside of the fabric?

A. I don't recall. That's what I was trying to sit here and think, if those stripes which were -- if I recall correctly, I think they were more stitching, if they created a bin-stripe on the other side. I can't recall.

Q. Were you able to eyeball the size of the jeans? In other words, just so I'm clear with my question, did you hold them up to yourself?

A. No, I did not.

Q. Now, it's hard to tell now. But I



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LORI GABBERTY

March 16, 2011

56

1 Gabberty

2 saw when you came in you're above average for  
3 female height; correct?

4 A. Yes.

5 Q. How tall are you?

6 A. Just shy of five-eight.

7 Q. Do you have a recollection today of  
8 making a mental note that the jeans were --  
9 the jeans we're talking about, the blue jeans  
10 we're talking about -- of being jeans that you  
11 couldn't fit into or they were jeans that  
12 would fit smaller person? Do you recall  
13 making any kind of mental note like that?

14 A. I don't. I don't. What I recall is  
15 that they would be about the size for someone  
16 roughly my age bracket at that time.

17 Q. Size, not style.

18 A. I believe it was size. It just --  
19 again, I did not hold them up. I did not --  
20 literally, just grabbed them, handed them. I  
21 didn't right-side-out the leg. So I can't say  
22 with certainty. But I do recall it would be  
23 for about someone around my age at that time.

24 Q. Because the jeans, the jeans we're  
25 talking about were popular --



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LORI GABBERTY

March 16, 2011

57

Gabberty

A. Right.

Q. -- and they were common for persons approximately 16 years old --

A. Right.

Q. Correct?

You indicated that you were contacted by a person that you believed to be a detective not too long ago, maybe late December, early January.

A. (Nodding).

Q. Did that person leave his card or give you the card?

A. I don't think -- I don't know if I have the card or if I wrote it down but I have it written down at home.

Q. And I'm talking about a meeting you had in a diner.

A. Correct.

Q. And was that person, did that person act professionally?

A. Yes.

Q. Going back to 1984, you said that at least one -- and I believe you said you believed it was more than one detective --



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LORI GABBERTY

March 16, 2011

58

1 Gabberty

2 came to the house --

3 A. It was definitely more than one.

4 Q. Definitely more than one and they  
5 came more than once. You believe they came  
6 more than twice?

7 A. I don't know how many times.

8 Q. Sorry. I didn't write this down.

9 Do you recall if those detectives  
10 acted professionally?

11 A. Yes.

12 Q. Those are the same detectives that  
13 asked for hair samples?

14 A. Correct.

15 Q. From what you remember, did they  
16 appear to be thorough in their investigation?

17 A. Yeah.

18 MS. CORNWALL: Objection.

19 Q. You may answer.

20 A. In my opinion. Again, with the  
21 jeans, that's the questions that came towards  
22 me. I just remember a lot of questions about  
23 the jeans.

24 Q. You testified today that you were not  
25 in the dining room at all times, that you came



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LORI GABBERTY

March 16, 2011

59

1 Gabberty

2 somewhat later, and you remember mostly the  
3 questions about the jeans.

4 A. Right.

5 Q. From what you heard --

6 A. As far as physically being there, I  
7 couldn't tell you when I joined or when I  
8 left.

9 Q. I understand that. I'm saying from  
10 what you saw, from what you heard and from  
11 what you recall, the detectives were thorough  
12 and professional as best you can recall?

13 A. Correct.

14 Q. You also testified that the  
15 detectives that we're referring to that came  
16 to your home --

17 A. At that time.

18 Q. -- showed you either a sample or  
19 samples of other jeans, and I believe you  
20 testified that you can't remember with any  
21 specificity what those jeans looked like?

22 A. Correct.

23 Q. Do you recall -- I'm going to prod a  
24 little bit. But do you recall thinking at the  
25 time these are close? I mean, do you have a



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LORI GABBERTY

March 16, 2011

60

1 Gabberty  
2 recollection of your reaction when you saw the  
3 jeans?

4 A. I don't. Best I can do is guess. I  
5 can't say for certainty what my reaction was.

6 Q. I'm not going to ask you to guess.  
7 But you do recall thinking, when you saw the  
8 jeans, when they were found in the back seat,  
9 that they were typical of jeans worn by  
10 teenagers at that time?

11 A. Yes.

12 Q. Were you the person that found the  
13 jeans in the back seat?

14 A. Yes.

15 Q. Were they found at the time that you  
16 went to Lakeview to see the car for the first  
17 time?

18 A. Yeah.

19 Q. Did you put the jeans in a bag, if  
20 you recall, when you took them to the police  
21 station?

22 A. No. I did not.

23 Q. You just took them.

24 And do you recall whose decision it  
25 was to take the jeans to the police station?



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LORI GABBERTY

March 16, 2011

61

Gabberty

A. It wasn't taking the jeans to the police station. It was taking the car to the police station.

Q. Thank you for that clarification.

A. The car was called in stolen. When it was found, the reaction was to bring the car to the police station to say we found the car. We didn't know at the time what the protocol was when you have found a car that you reported missing.

So we went in to say that the car has been found. We brought the jeans in with us. They weren't ours.

Q. So you weren't thinking at the time that the jeans were -- could possibly be a piece of evidence?

A. No. But, just, they weren't ours and it's odd.

Q. You were doing --

A. An odd find.

Q. -- a civic duty.

Who is Mary? You've mentioned a person by the name of Mary. Who is Mary, to your knowledge?



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LORI GABBERTY

March 16, 2011

62

Gabberty

A. To my knowledge, she's an investigator that works for Debbie.

Q. You said that you have spoken to her on, I think you said, at least two occasions?

A. Uh-huh.

Q. Were those occasions on the phone or in person?

A. First two were on the phone, third one was in person.

Q. And that was when?

A. With Debbie.

Q. And that was approximately when?

A. Here we go again with these dates. Late last year.

Q. Late 2010? Rough is fine.

A. That's rough. Give or take a month.

Q. And did you meet at her office, at your home or a neutral place?

A. Neutral place.

Q. You were asked to look at a newspaper article that appeared in Newsday. I think it was late 2010, if I read it correctly. That's 258 in evidence at this hearing.

A. Which means that we met after.



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LORI GABBERTY

March 16, 2011

63

Gabberty

Q. What's the date?

A. It says December 25, 2010. Because I remember referencing the article at our meeting.

Q. Do you know or do you recall if there were any other articles about any part of this case in this litigation in Newsday or any other paper in 2010 or early 2011?

A. I don't recall. I don't recall.

Q. To the best of your recollection --

A. I thought there might have been one small article --

Q. To -- sorry.

A. -- about the parents. But I can't be certain.

Q. Well, might you have read the other article as well?

MS. CORNWALL: Objection. Calls for speculation. Go ahead.

A. If it was in there, yeah. There's been a lot of odd cases like this.

MR. FREEMAN: I'm going to mark for identification -- are we going --

MS. CORNWALL: Yeah. In order. It



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LORI GABBERTY

March 16, 2011

64

1 Gabberty

2 would be 259.

3 MR. FREEMAN: I'm going to mark for  
4 identification 259, 260, 261 and 262, four  
5 photographs that I'm going to show the  
6 witness. I ran out of ink so...

7 MS. CORNWALL: Have these been  
8 previously disclosed?

9 MR. FREEMAN: No.

10 MS. LIMANI: They're not from  
11 discovery.

12 MR. FREEMAN: They were never used by  
13 anyone prior to today.

14 (Exhibits 259 through 262, a series  
15 of copied photographs, were so marked for  
16 identification.)

17 Q. Ms. Gabberty, I'm going to ask you to  
18 look at photographs and see if the photographs  
19 I show you refresh your recollection of what  
20 the jeans looked like, the ones that you took  
21 out of the car.

22 A. Okay.

23 Q. I'm going to hand you, first, 259 and  
24 I'm going to ask you to disregard the stripes  
25 that go perpendicular to the vertical stripes



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March 16, 2011

65

Gabberty

because it's a printing error. I'm sure you can see that. And I'm asking you if it refreshes your recollection. Because you've said that you don't -- you're really not sure as you sit here today what the jeans looked like. And I thought perhaps viewing a photo of jeans would refresh your recollection.

MS. CORNWALL: And could you just put on the record the source of the four photographs of various types of striped jeans and clarify whether these photographs come from any police file in connection with this investigation or whether they are just examples of striped jeans that you found independently?

MR. FREEMAN: Nadjia Limani will answer that question.

MR. GRANDINETTE: The other thing, if I can impose on you, you mentioned in this specific photograph that there was some form of printing error.

MR. FREEMAN: Yes.

MR. GRANDINETTE: Could you just clarify for the record what you mean by, you



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LORI GABBERTY

March 16, 2011

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Gabberty

know, what is an error or what was the printing error so we're clear? The horizontal lines is what you're referring to?

MR. FREEMAN: Yes.

MR. GRANDINETTE: Okay.

MR. FREEMAN: I think it's obvious.

MR. GRANDINETTE: So the series of horizontal lines from the bottom of the leg up to the torso.

MR. FREEMAN: Right. You can see at the waist, you can see the true color of the print. And as we go down from the waist to the knee, the colors get lighter and more faded. The printing error is the horizontal lines.

MR. GRANDINETTE: So then can we have an agreement, just so -- because you're using this -- with respect to what has been marked 259, the purpose of that photograph is the lines which run vertical as opposed to horizontal and the horizontal lines are the error?

MR. FREEMAN: Correct. And we can also say that at the very top of this



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March 16, 2011

67

1 Gabberty  
2 particular pair of jeans, the picture is not  
3 affected, it appears not to be affected by the  
4 printing error. So we can see at the top what  
5 the jeans look like.

6 MS. LIMANI: Okay. As for the  
7 source, this was research that I did and  
8 they're from various thrift stores or Etsy  
9 that have jeans from the early to mid '80s as  
10 vintage. And I downloaded the images and we  
11 printed them out. So, no, they do not come  
12 from any Nassau County police file or any  
13 Nassau County District Attorney's file, for  
14 the record.

15 MS. CORNWALL: Thank you.

16 BY MR. FREEMAN:

17 Q. Ms. Gabberty, you were able to hear  
18 that conversation. So keep that in mind when  
19 you look at picture 259.

20 A. Okay.

21 This is definitely the category of  
22 jeans as I described before being stretchy and  
23 denim color. As far as the details on the  
24 pants, I honestly don't recall.

25 Q. I'm going to hand you what's been



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LORI GABBERTY

March 16, 2011

68

1 Gabberty  
2 marked as 260 for identification at this  
3 deposition and ask you the same question with  
4 respect to that picture.

5 A. Yeah. These look a little bit  
6 more -- again, it's on a model. So I don't  
7 know -- they look a little more baggier, a  
8 little more like jeans versus being stretchy  
9 and more fitted.

10 Q. So what we can take away from your  
11 testimony is that the jeans that you recall  
12 were not only stretchy, but they were  
13 tapered --

14 A. Yes.

15 Q. -- and intended to be formfitting?

16 A. Yes.

17 Q. I would like to show you what's been  
18 marked as 261 and ask you the same set of  
19 questions.

20 A. Yeah. These don't look as tapered  
21 and as fitted.

22 Q. Likewise with respect to 262?

23 A. Yeah. 259 is the closest.

24 MS. CORNWALL: Just for the record,  
25 photograph 262 does not show the legs of the



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LORI GABBERTY

March 16, 2011

69

1 Gabberty

2 jeans.

3 MS. LIMANI: No. The last one. The  
4 behind. That one.

5 THE WITNESS: Yeah. You can tell,  
6 just here, how baggy. Not that I'm a stylist  
7 person or anything. But they were definitely  
8 intended to be fitted.

9 Q. And having -- sorry. Go ahead.

10 A. The closest comparison would be to  
11 today's version of skinny jeans, if anybody  
12 knows what that is. Tapered and fitted.

13 Q. And as you have finished looking at  
14 259 through 262, is your memory refreshed with  
15 respect to whether the -- there were stripes  
16 on the outside or whether there were colors on  
17 the stripes or any such recollection?

18 A. No.

19 MR. FREEMAN: I have nothing further.

20 MS. CORNWALL: Just very briefly.

21 CONTINUED EXAMINATION

22 BY MS. CORNWALL:

23 Q. I would like to show you what has  
24 been previously marked as Exhibit 161. It's a  
25 report made by a Nassau County officer on



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70

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December 6th of 1984 indicating, "present at 58 Broadway in Malverne, home of John T. French." John T. French is your brother?

A. Uh-huh.

Q. And is 58 Broadway in Malverne where you grew up?

A. Uh-huh. Yes. Sorry.

Q. And the report indicates "he," meaning John French, "stated that on November 10, 1984 his 1971 Oldsmobile sed," short for sedan, I presume, "registration 5233 BJN, New York, his car was parked on southwest corner of Lakeview Avenue and Ocean Avenue. It was stolen sometime between 21:30 to 23:05 hours that date."

Is that consistent with your understanding of your brother's car and when it was stolen?

A. I'll go by what's on here. Like I said, I don't know the exact date or location.

Q. Exhibit 161 goes on to say, "On 11/18/84, Mr. French went out looking around for his car. He entered Lakeview and he found it parked on Woodfield Road near the railroad



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71

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2 tracks."

3 Is that consistent with your memory  
4 of where you drove your brother to pick up the  
5 car?

6 A. As I said before, that -- it was a  
7 dirt area and I believe the street name was  
8 Woodfield Road.

9 Q. Was the area where you picked up the  
10 car with your brother by a railroad track?

11 A. I think so.

12 Q. The report continues, "He then got  
13 his keys and drove the car to Lynbrook PD.  
14 Prior to going to the PD, his sister Lori  
15 found a pair of ladies blue jeans with  
16 stripes. Blue jeans were inside out. Jeans  
17 were found on right rear floorboard, halfway  
18 under right passenger seat."

19 A. My recollection was that they were on  
20 the seat.

21 Q. With the exception that your memory  
22 is that you found the jeans on the seat as  
23 opposed to on the right rear floorboard  
24 halfway under the seat, is this report mainly  
25 that you found ladies' blue jeans with stripes



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72

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2 inside out consistent with your memory?

3 A. Yes. Again, though, I recall one leg  
4 being inside out. But it was a long time ago.

5 MS. CORNWALL: Thank you very much.  
6 I have no further questions.

7 MR. FREEMAN: I just have some  
8 questions relating to that last series of  
9 questions.

10 CONTINUED EXAMINATION

11 BY MR. FREEMAN:

12 Q. You do not recall the date that the  
13 car was found; correct?

14 A. Correct.

15 Q. And your recollection is that the  
16 jeans that you found had stripes on the inside  
17 of the fabric?

18 A. Yeah. And as I stated, it could have  
19 come through as pinstripes on the other side.

20 Q. But you don't recall whether the  
21 jeans you found had pinstripes showing on the  
22 outside of the fabric?

23 A. I don't recall. No.

24 Q. And your recollection is that the  
25 jeans were found on the back seat; correct?



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73

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A. That's what I recall now.

Q. Do you know whether you imparted the information contained in this report, 161, or whether your brother gave the information?

A. I don't.

MR. FREEMAN: I have nothing further.

MS. CORNWALL: One last question.

CONTINUED EXAMINATION

BY MS. CORNWALL:

Q. Did any Nassau County officer ever ask you to sign a statement?

A. In 1984 or '85? I don't recall. I don't know if there were things we signed. I know we gave hair. There was a lot of questions. Did we sign anything? I don't recall.

Q. Do you recall sitting down with any Nassau County police officer and having them write out a statement reflecting your memory of finding the car and the jeans, whether or not you were asked to sign it?

A. I don't recall.

MS. CORNWALL: I have nothing further.



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74

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MR. FREEMAN: Same.

MS. CORNWALL: Thank you so much for  
coming in.

THE VIDEOGRAPHER: Time is 11:49.  
We're off the record.

(Time noted: 11:49 a.m.)



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March 16, 2011

75

I N D E X

EXHIBITS PAGE

258 copy of Newsday article 5  
(pre-marked)

259 through 262, a series of copied  
photographs 64

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witness to fill in information

EXAMINATION BY

Ms. Cornwall 4, 69  
73

Mr. Freeman 49  
72



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76

C E R T I F I C A T E

STATE OF NEW YORK           )  
  : SS.:  
COUNTY OF NEW YORK        )

I, Helga Christiane Lavan, a Notary  
Public for and within the State of New York,  
do hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that  
such examination is a true record of the  
testimony given by that witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or by marriage and that I am in no  
way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 25th day of March 2011.

\_\_\_\_\_  
Helga Christiane Lavan, RPR



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77

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Our Assignment No. 318507

Case Caption: Restivo v. Nassau County

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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78

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Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

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79

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Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

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80

<b>A</b>				
<b>a.m</b> 74:7	7:15 63:20 69:9	<b>anybody</b> 39:25 49:2 69:11	<b>asked</b> 14:18 27:14, 17 37:23 40:4 46:8 48:12	56:2
<b>ability</b> 50:25	<b>ALBERT</b> 1:10 2:9	<b>appear</b> 58:16	58:13 62:21 73:22	<b>aware</b> 25:8,15,16
<b>able</b> 51:2,22 55:20 67:17	<b>alleged</b> 8:5	<b>appeared</b> 62:22	<b>asking</b> 6:22 10:24,25 15:6 29:3,8 30:21 41:21 49:13 65:3	<b>B</b>
<b>a b o v e - e n t i t l e d</b> 3:5	<b>ALLEN</b> 2:11	<b>appears</b> 67:3	<b>Assignment</b> 77:3	<b>B</b> 4:13
<b>accommodate</b> 50:6	<b>allow</b> 54:2	<b>apply</b> 50:3	<b>associate</b> 5:23	<b>back</b> 9:19 23:12,24 24:10 29:23, 24 30:2 39:4 40:11 41:2 42:6 57:23 60:8,13 72:25
<b>accurate</b> 40:24 41:3 77:10	<b>allows</b> 54:6	<b>appreciate</b> 42:6,9	<b>associated</b> 12:19 24:12	<b>bag</b> 60:19
<b>act</b> 53:11 57:21	<b>alone</b> 9:4 51:6	<b>approximatel y</b> 5:10 13:7 57:4 62:13	<b>assume</b> 50:25	<b>baggy</b> 69:6
<b>acted</b> 58:10	<b>already</b> 41:19	<b>area</b> 17:17,20 18:8 19:7 20:3 71:7,9	<b>assuming</b> 50:20	<b>bar</b> 51:5
<b>action</b> 76:15	<b>ALSO</b> 4:18 5:21 7:4 8:17 18:12 27:4 31:16 39:11 41:7 46:2,20,25 53:25 54:13 55:4,10 59:14 66:25	<b>around</b> 12:17 16:5,6 25:18 40:12 56:23 70:23	<b>attend</b> 9:16	<b>based</b> 46:10
<b>address</b> 40:7,10,15 41:7 42:7	<b>amiss</b> 22:24	<b>arrested</b> 46:4	<b>attention</b> 14:21 36:9	<b>Becht</b> 32:8
<b>addresses</b> 41:12	<b>and/or</b> 77:11	<b>arriving</b> 8:5	<b>Attorney</b> 4:14,16,19 36:2	<b>behalf</b> 34:17 36:6,8 38:22
<b>affiliations</b> 5:16	<b>angle</b> 18:3,20	<b>article</b> 5:3 42:19,24 43:14,15,18 44:6,11,12, 19,25 45:2, 23,25 62:22 63:4,13,18 75:5	<b>Attorneys</b> 4:4,8	<b>being</b> 5:8 11:2 20:2 45:24 47:25 50:16 51:25 56:10 59:6 67:22 68:8 72:4
<b>age</b> 10:23 51:7 56:16,23	<b>angles</b> 18:6	<b>articles</b> 63:7	<b>Attorney's</b> 67:13	<b>belief</b> 46:3,7
<b>ago</b> 8:13,23 12:2 18:22 47:23 50:12 57:9 72:4	<b>another</b> 18:12	<b>aside</b> 31:16 44:24	<b>authorities</b> 8:13 31:8,15, 21 32:11,22 34:21	<b>believe</b> 12:22 16:24 20:19 25:11 28:6 31:10, 12,24 41:25
<b>agreement</b> 66:18	<b>answer</b> 7:3,15 58:19 65:18		<b>available</b> 16:4	
<b>ahead</b>	<b>ANTHONY</b> 2:17 4:6 21:22		<b>Avenue</b> 70:14	
			<b>average</b>	



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81

42:13,22 46:8 56:18 57:24 58:5 59:19 71:7 <b>believed</b> 45:17 46:17 57:8,25 <b>believes</b> 8:11 <b>Bellmore</b> 9:3 <b>belong</b> 20:8 <b>best</b> 21:24 37:21 38:25 59:12 60:4 63:11 <b>better</b> 40:4 <b>between</b> 16:13 26:23 27:7 35:21 36:2 48:22 70:15 <b>bin-stripe</b> 55:19 <b>BIRDSALL</b> 1:11 2:14 <b>birth</b> 10:3,16 <b>bit</b> 6:19 18:19 59:24 68:5 <b>BJN</b> 70:12 <b>block</b> 23:4 <b>blood</b> 29:12 76:16 <b>blue</b> 20:13 21:10 26:3 47:24	54:14,20,24 56:9 71:15, 16,25 <b>blue-jean</b> 20:16 <b>book</b> 40:10,15 41:8 <b>born</b> 11:5 <b>bottom</b> 11:20 14:24, 25 66:9 <b>boys</b> 21:7 <b>bracket</b> 56:16 <b>break</b> 7:18 49:13,16 50:4 <b>brief</b> 38:6 <b>briefly</b> 69:20 <b>bring</b> 61:7 <b>Broadway</b> 70:3,6 <b>brother</b> 10:19,24 11:12,24 15:4,24 17:23 19:7 22:18 23:3,7,19,24 24:14,16,23 26:18,21,24 27:8,23 30:8 31:5 32:5 34:5 35:9 39:11,16,18 48:19 51:10 70:4 71:4,10 73:5	<b>brother's</b> 15:20 22:24 23:16 26:3 33:6,24 35:22 36:3 41:6 48:18 70:18 <b>brought</b> 17:23 18:15 21:15 23:12 61:13 <b>BRUSA</b> 2:12 <b>BRUSTIN</b> 4:8 5:18 <b>building</b> 52:24 <b>buy</b> 12:4 <hr/> <b>C</b> <hr/> <b>C</b> 4:2 76:2 <b>call</b> 13:19 38:10 <b>called</b> 13:18 16:11 38:8,12 49:4, 5 61:6 <b>calling</b> 15:22 <b>Calls</b> 63:19 <b>came</b> 13:12 26:8,9, 10,11 27:10, 11 42:19 47:3 48:12,23 56:2 58:2,5,21,25 59:15 <b>CAMPBELL</b> 2:18 <b>capacity</b>	2:5,6,7,8,9, 10,11,12,13, 14,15,16,17, 18,19,20,21 <b>Caption</b> 1:17 77:4 <b>captioned</b> 77:9 <b>car</b> 11:2,12,14, 22,25 12:4,7, 14 13:4,6,8, 10,15,17,22 14:2,23 15:20,23,25 16:7,9,17, 20,25 17:3,5, 6,9,12,23 18:16 19:8, 11,16 20:5,7, 9 21:11 22:3, 19,21,25 23:7,11,12, 21 24:13,16, 24 25:3,13 26:3 27:8,23 28:14,19 29:11,22 30:11,16,17, 21 31:17,23 32:5,6 34:21, 25 35:8,12, 16,22 36:3,7 48:18 49:3 50:8,10,13, 15,17,18,19, 20,21 51:4, 16,22 52:4,6 60:16 61:3,6, 8,9,10,12 64:21 70:13, 18,24 71:5, 10,13 72:13 73:21	<b>card</b> 48:15 57:12, 13,15 <b>care</b> 12:7,10 <b>careless</b> 51:13 <b>caring</b> 12:11 <b>case</b> 8:12 14:15,20 41:15 42:14 63:8 77:4 <b>cases</b> 63:22 <b>category</b> 67:21 <b>cell</b> 41:9 <b>certain</b> 17:25 18:11 19:2 23:4 63:16 <b>certainty</b> 18:21 19:25 20:23 50:22 56:22 60:5 <b>certify</b> 76:9,14 <b>chance</b> 41:10 <b>change</b> 78:4,7,10, 13,16,19,22 79:4,7,10, 13,16,19,22 <b>changes</b> 40:25 77:10, 13 <b>CHARLES</b> 1:12
--	---	---	---	---



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March 16, 2011

82

<b>CHARLIE</b> 2:10 <b>check</b> 39:5 40:8 <b>children</b> 9:7 <b>Christiane</b> 3:8 76:7,22 <b>Christmas</b> 25:5,7 <b>civic</b> 61:22 <b>claims</b> 8:6,16 <b>clarification</b> 50:4 61:5 <b>clarify</b> 65:12,25 <b>clean</b> 19:21 20:9 <b>cleaned</b> 24:16 <b>clear</b> 55:21 66:3 <b>close</b> 28:23 40:20 59:25 <b>closed</b> 14:20 <b>closely</b> 48:4 <b>closest</b> 68:23 69:10 <b>clothes</b> 26:14 <b>collection</b> 11:18 <b>Color</b> 54:17,19,20,	24 66:12 67:23 <b>colors</b> 66:14 69:16 <b>column</b> 52:2 <b>come</b> 13:2 22:15,22 23:23 24:15, 22 30:3 31:9 34:20 35:8 65:12 67:11 72:19 <b>coming</b> 39:19 74:4 <b>comment</b> 18:25 19:4 27:20 <b>COMMISSIONER</b> 1:5,6,7 <b>commit</b> 8:9 <b>common</b> 57:3 <b>compare</b> 31:22 <b>comparison</b> 69:10 <b>complete</b> 18:21 <b>complies</b> 44:15 <b>concerning</b> 45:25 <b>Cone</b> 33:19 <b>confident</b> 41:3 <b>confirmed</b> 46:8 <b>confusing</b>	6:24 <b>CONNAUGHTON</b> 1:13 2:13 <b>connection</b> 26:4,7 34:18 65:13 <b>consistent</b> 70:17 71:3 72:2 <b>contact</b> 35:15,21 38:21 41:14 48:25 <b>contacted</b> 24:13,23 34:16 36:5,16 39:25 57:7 <b>contained</b> 73:4 <b>context</b> 8:2 <b>CONTINUED</b> 69:21 72:10 73:9 <b>continues</b> 1:17 71:12 <b>conversation</b> 26:19,23 27:7 37:8 44:5 45:24 47:2,6 48:18 67:18 <b>conviction</b> 8:8 <b>copied</b> 64:15 75:6 <b>copies</b> 14:7 <b>copy</b> 5:2 8:17 14:4 40:22 43:12 48:16 75:5 <b>corner</b>	40:12 70:13 <b>CORNWALL</b> 4:11 5:17 6:7 7:23 14:14 22:14,16 44:9 49:7 58:18 63:19,25 64:7 65:9 67:15 68:24 69:20, 22 72:5 73:8, 10,24 74:3 75:12 <b>Correct</b> 9:18,23 10:7, 20 11:7,10 19:12 23:9 50:10 51:7,14 54:4,7,14,23 56:3 57:6,19 58:14 59:13, 22 66:24 72:13,14,25 <b>corrections</b> 77:11 <b>correctly</b> 55:17 62:23 <b>cost</b> 12:19 <b>cotton</b> 53:24 <b>couldn't</b> 56:11 59:7 <b>Counsel</b> 5:15 50:15 <b>Country</b> 3:7 4:4 5:9 <b>COUNTY</b> 1:5 2:5 4:14, 16,19 5:8,21 8:6,13 14:16 27:15 28:13, 16,25 30:4 31:8,15,20	32:3,10,13, 18,21 34:17, 21,25 35:5, 11,15 36:6,8, 17,23 38:22 39:15 42:11 43:5 45:10 46:21 47:3, 10,19 49:25 67:12,13 69:25 73:11, 19 76:4 77:4 <b>couple</b> 18:6 42:20 49:6,10 <b>course</b> 12:3 <b>COURT</b> 1:2 5:13 6:21 <b>cracked</b> 12:17 <b>created</b> 55:18 <b>crime</b> 8:9 <b>crossing</b> 18:8 <b>current</b> 8:7 <b>CV-06-6695</b> 1:4 <b>CV-06-6720</b> 2:4 <hr/> <b>D</b> <hr/> <b>D</b> 75:2 <b>damage</b> 20:2 <b>DANIEL</b> 2:16 <b>dashboard</b>
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March 16, 2011

83

20:3	1:15 2:22	25:23 28:21	26:19 40:4	66:13 73:18
<b>date</b>	<b>defenses</b>	29:7 47:7	<b>dirt</b>	<b>downloaded</b>
7:16 13:9	8:17	<b>description</b>	17:17 18:8	67:10
15:10,14 63:2	<b>definitely</b>	29:9 54:21	19:7 71:7	<b>drivable</b>
70:16,21	58:3,4 67:21	<b>desk</b>	<b>dirty</b>	52:7
72:12	69:7	21:18 53:8	19:22	<b>drive</b>
<b>dated</b>	<b>DEMPSEY</b>	<b>details</b>	<b>disclosed</b>	12:17 16:4
43:17	1:10 2:6	67:23	64:8	17:5,8 19:11
<b>dates</b>	<b>Denim</b>	<b>DETECTIVE</b>	<b>discovery</b>	50:25 51:22
49:5 62:14	54:25 55:3	1:7,8,9,10,	41:13 64:11	52:3
<b>daughter</b>	67:23	11,12,13 2:18	<b>discuss</b>	<b>drivers</b>
45:25	<b>DENNIS</b>	36:23 37:4,	46:25	51:2
<b>Dave</b>	1:8 2:2 4:8	10,17 38:14,	<b>disregard</b>	<b>driving</b>
32:6	8:3 35:20	18 39:10,15	64:24	51:6,9 52:6
<b>day</b>	42:15 43:7	42:12 43:6	<b>distinct</b>	<b>dropped</b>
22:23 24:10	44:14,20	45:10 57:9,25	53:17 55:8	46:24
29:2 35:3	<b>department</b>	<b>detectives</b>	<b>distinguishi</b>	<b>drove</b>
39:21 52:12,	21:20 24:11	26:8,10,11,	<b>ng</b>	16:6 19:6,11
13 76:19	50:17 51:20	23 27:8,15	20:16	51:11,15
77:15	<b>depicting</b>	28:13,17,25	<b>DISTRICT</b>	71:4,13
<b>Debbie</b>	18:8	35:4 46:22	1:2 35:25	<b>duly</b>
5:17 22:13	<b>DEPOSITION</b>	47:3,10,19	67:13	6:4 76:11
62:3,12	3:4 5:6,8	48:12,23	<b>document</b>	<b>during</b>
<b>DEBORAH</b>	7:9,21,22,24	58:9,12	14:13 32:2	26:22 50:14
4:11	9:16 14:19	59:11,15	<b>documentatio</b>	<b>duty</b>
<b>Decades</b>	21:23 39:23	<b>detective's</b>	<b>n</b>	61:22
43:16	40:18,21 68:3	39:7	48:16	<b>E</b>
<b>December</b>	77:1,8,12	<b>didn't</b>	<b>doesn't</b>	<b>E</b>
36:11 42:25	78:1 79:1	20:8 23:2	32:7	4:2 17:20
43:17 45:6	<b>depositions</b>	31:11 52:3	<b>doing</b>	75:2 76:2
48:22,25	8:15	56:21 58:8	12:23 61:20	<b>each</b>
57:10 63:3	<b>Deputy</b>	61:9	<b>DONALD</b>	33:21 41:14
70:2	4:16,19	<b>DIEHL</b>	1:5	<b>earlier</b>
<b>decision</b>	<b>describe</b>	1:14 2:15	<b>DONNELLY</b>	45:13 47:24
41:25 60:24	20:11 27:22	<b>different</b>	2:12	<b>early</b>
<b>DECLARATION</b>	46:21,23	11:20 23:5	<b>Donovan</b>	57:10 63:9
77:6	47:23	<b>diner</b>	33:15 34:11	67:9
<b>declare</b>	<b>described</b>	37:16 57:18	<b>down</b>	<b>easier</b>
77:7	24:17 28:21	<b>Dining</b>	23:3 37:2,7,8	54:3
<b>decorated</b>	53:15 54:13	26:25 27:3,4	57:15,16 58:8	<b>EASTERN</b>
25:5	55:3 67:22	58:25		1:2
<b>Defendants</b>	<b>describing</b>	<b>directed</b>		



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March 16, 2011

84

<b>ed</b> 51:2	37:24	<b>exist</b> 53:24	1:8	56:6
<b>effect</b> 46:15	<b>Etsy</b> 67:8	<b>expect</b> 8:5 53:13	<b>feel</b> 41:16 42:7	<b>fixing</b> 12:19
<b>either</b> 8:10,14 35:16 39:2 42:12 44:20 59:18	<b>evening</b> 15:16 22:23	<b>expert</b> 15:5,6	<b>female</b> 36:21 56:3	<b>floorboard</b> 71:17,23
<b>else's</b> 23:8	<b>events</b> 8:23	<b>explain</b> 6:19 30:13 38:9	<b>FERGUSON</b> 4:16	<b>folks</b> 33:23
<b>emergency</b> 13:20	<b>eventually</b> 27:6	<b>eyeball</b> 55:20	<b>file</b> 65:13 67:12,13	<b>follow</b> 49:11
<b>employees</b> 8:7	<b>evidence</b> 61:17 62:24	<b>F</b>	<b>fill</b> 40:18 75:10	<b>followed</b> 51:15
<b>encountered</b> 53:6	<b>exact</b> 48:6 50:10 70:21	<b>Fabric</b> 76:2	<b>finally</b> 19:3	<b>following</b> 52:5
<b>enough</b> 24:8	<b>Exactly</b> 33:12	<b>fact</b> 9:15 24:5 49:2	<b>find</b> 13:10 15:12, 25 16:5,7,9, 17 20:4,7 61:21	<b>follows</b> 6:5
<b>entered</b> 21:23 70:24	<b>EXAMINATION</b> 6:6 49:22 69:21 72:10 73:9 75:11 76:10,12	<b>faded</b> 66:15	<b>finding</b> 24:20 37:23 73:21	<b>form</b> 43:2 46:9,12 65:21
<b>entering</b> 7:7	<b>examined</b> 6:5	<b>Fair</b> 24:8,19 48:21	<b>fine</b> 40:17 62:16	<b>former</b> 8:7
<b>enters</b> 7:8	<b>example</b> 12:13	<b>fairly</b> 55:8	<b>finished</b> 7:3,6 49:10 69:13	<b>form-fitted</b> 54:7
<b>entire</b> 77:8	<b>examples</b> 65:15	<b>fall</b> 10:16	<b>first</b> 6:4 11:19 14:15 28:21 31:8 53:2 60:16 62:9 64:23	<b>formfitting</b> 68:15
<b>entitled</b> 43:16	<b>exception</b> 71:21	<b>familiar</b> 18:20,25 25:21 32:7 37:5,12 50:12 52:10	<b>fit</b> 56:11,12	<b>forth</b> 76:11
<b>ERRATA</b> 77:1,12 78:1 79:1	<b>excuse</b> 10:13	<b>family</b> 10:23 30:10 31:17,22	<b>fitted</b> 54:5 68:9,21 69:8,12	<b>forward</b> 17:19
<b>error</b> 65:2,22 66:2, 3,15,23 67:4	<b>Exhibit</b> 5:2 11:17 14:5,7,14 17:19 25:20 32:2 34:15 43:11 69:24 70:22	<b>far</b> 48:3 52:21 59:6 67:23	<b>five</b> 11:6 37:15 38:5,19 49:15	<b>found</b> 11:2 13:17 16:10,11,12, 15,21 17:12 20:12 21:5,9 22:19 25:3,11 26:2 27:21,23 28:14,19 29:11,21 30:19 35:22 36:3,7 41:18 47:15 53:16 60:8,12,15 61:7,8,10,13
<b>ESQ</b> 4:6,11,16, 19,20	<b>exhibits</b> 14:8 64:14 75:4	<b>FARRELL</b>	<b>five-eight</b>	
<b>essence</b> 13:15 22:3 27:17				
<b>essentially</b>				



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March 16, 2011

85

65:15 70:24 71:15,17,22, 25 72:13,16, 21,25 <b>four</b> 64:4 65:10 <b>FRAAS</b> 1:12 2:10 <b>FRANK</b> 1:12 2:6 <b>free</b> 42:8 <b>FREEMAN</b> 4:19 5:20 7:4 14:12 31:11, 14 41:25 43:2 44:7 49:9,12, 15,23,25 63:23 64:3,9, 12 65:17,23 66:5,7,11,24 67:16 69:19 72:7,11 73:7 74:2 75:14 <b>freestanding</b> 52:24 <b>French</b> 6:15 9:20 70:4,10,23 <b>friends</b> 16:4 33:7,24 <b>front</b> 20:3 21:18 24:6 <b>full</b> 6:8 <b>further</b> 49:7 69:19 72:6 73:7,25 76:14 <b>Fusco</b> 25:9,23 26:5	30:25 31:2 38:15 44:24 46:5 <b>future</b> 8:2 <hr/> <b>G</b> <b>G</b> 1:11 18:17 <b>GABBERTY</b> 3:4 5:7 6:1, 3,10 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1,18 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1,17 65:1 66:1 67:1,17 68:1 69:1 70:1 71:1 72:1 73:1 74:1 77:18	78:24 79:25 <b>gave</b> 22:19 33:10 73:5,15 <b>general</b> 8:22 11:3 <b>generally</b> 52:17 <b>girl</b> 25:9 <b>girls</b> 21:6,8 <b>give</b> 14:7 21:19 23:17 27:17 40:16 41:17 42:4 43:11 48:15 53:20 54:3 57:13 62:17 <b>given</b> 6:16 76:13 <b>giving</b> 41:11,23 <b>Glasser</b> 33:17 <b>go</b> 7:15 10:22 39:4 40:23 51:19 62:14 63:20 64:25 66:13 69:9 70:20 <b>goes</b> 33:9 70:22 <b>going</b> 20:23 27:16 30:16 39:22 50:16 53:13 54:6,18 57:23 59:23 60:6 63:23,24	64:3,5,17, 23,24 67:25 71:14 <b>Goldman</b> 37:11 <b>Good</b> 5:19 12:6,10 17:14 22:11, 12 49:24 <b>GOODMAN</b> 4:13 <b>gotten</b> 48:8 <b>grabbed</b> 56:20 <b>Grandinette</b> 3:6 4:3,6 8:4 21:22 22:9, 12,15 49:14 65:19,24 66:6,8,17 <b>granular</b> 29:9 <b>grew</b> 70:7 <b>GRUBER</b> 1:11 2:7 <b>guess</b> 13:21 26:15 28:4 30:17 60:4,6 <b>guessing</b> 28:8 37:22 <b>guy</b> 23:3 24:6 <b>guys</b> 41:18 <b>guys'</b> 44:2 <hr/> <b>H</b> <b>H</b>	18:24 <b>hair</b> 30:4 31:7,21 32:11,19 33:3,10 47:7 48:24 58:13 73:15 <b>hairs</b> 31:22 <b>halfway</b> 71:17,24 <b>HALSTEAD</b> 2:2,3 4:9 5:19 8:3 35:20 42:15 43:7 44:14,20 <b>hand</b> 64:23 67:25 76:19 <b>handed</b> 22:6 56:20 <b>happen</b> 13:6 <b>happened</b> 13:3 19:6 22:17 23:13 <b>happens</b> 7:13 <b>hard</b> 55:25 <b>HARRY</b> 1:13 2:8 <b>HEAD</b> 1:8,9 <b>hear</b> 7:10 24:10 27:7 31:11 67:17 <b>heard</b> 59:5,10 <b>hearing</b> 62:24
--	---	---	--	---



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March 16, 2011

86

<b>HEATHER</b> 2:3 4:9	<b>hours</b> 70:15	<b>indicated</b> 42:7 46:3 57:7 77:11	<b>interested</b> 46:15,19 76:17	20:14,21 21:6,10,19 22:6,20 26:3 27:13,15,18, 20,22 28:2, 12,14,17 29:4,6,11,21 30:22 35:17, 22 36:3,7 46:22 47:7, 11,15,20,23, 25 48:6,13,24 49:2 53:4,15, 23 54:2,9,14, 20,22 55:21 56:8,9,10, 11,24 58:21, 23 59:3,19,21 60:3,8,9,13, 19,25 61:2, 13,16 64:20 65:6,8,11,15 67:2,5,9,22 68:8,11 69:2, 11 71:15,16, 22,25 72:16, 21,25 73:21
<b>height</b> 56:3	<b>house</b> 25:5 26:8,9, 11,22 39:21 47:4 48:12,23 52:23 58:2	<b>indicates</b> 44:25 70:9	<b>interviewed</b> 8:12 33:11	
<b>held</b> 3:6 5:8		<b>indicating</b> 70:2	<b>introduce</b> 5:15	
<b>Helga</b> 3:8 5:14 76:7,22	<b>Hudson</b> 4:10	<b>individual</b> 2:5,6,7,8,9, 10,11,12,13, 14,15,16,17, 18,19,20,21	<b>investigatin</b> <b>g</b> 38:14	
<b>help</b> 36:10	<b>husband</b> 9:7	<b>information</b> 8:11 41:2,17, 23 73:4,5 75:10	<b>investigatio</b> <b>n</b> 32:4 58:16 65:14	
<b>helping</b> 46:15,19	<b>I</b>	<b>ink</b> 64:6	<b>investigator</b> 35:19 62:3	
<b>Hence</b> 48:2	<b>idea</b> 24:14 25:4 32:12,15,20, 21,23 33:9 34:19	<b>inquiring</b> 45:19	<b>issues</b> 39:16	
<b>her</b> 62:4,18	<b>identificati</b> <b>on</b> 5:4 63:24 64:4,16 68:2	<b>insert</b> 40:25	<b>J</b> 1:6 4:16	
<b>hereby</b> 76:9	<b>identify</b> 14:12 44:7	<b>inside</b> 12:14 19:16 20:5,18 21:2 29:18,19 47:25 48:2 55:5,11 71:16 72:2,4,16	<b>JACK</b> 2:16	
<b>hereinbefore</b> 76:11	<b>images</b> 67:10	<b>inside-out</b> 21:10	<b>Jackie</b> 33:15 34:11	
<b>hereof</b> 77:12	<b>imparted</b> 73:3	<b>inspect</b> 35:2	<b>jail</b> 42:15,18 44:21,23 45:4,12,18 46:6,11,16, 17	
<b>hereunto</b> 76:18	<b>impose</b> 65:20	<b>instructions</b> 50:2	<b>JAMES</b> 1:7	
<b>Hillman</b> 37:4	<b>impression</b> 38:16 45:7	<b>insured</b> 51:4	<b>January</b> 36:14 39:2 42:12 45:14 46:20 47:2 57:10	
<b>hold</b> 55:22 56:19	<b>imprisonment</b> 8:8 44:24	<b>intended</b> 68:15 69:8	<b>JASON</b> 2:2 4:9	
<b>home</b> 13:12 22:21, 23 37:3,9 57:16 59:16 62:19 70:3	<b>includes</b> 14:15	<b>interaction</b> 46:21,23	<b>jeans</b>	
<b>HOMICIDE</b> 1:8,9	<b>independentl</b> <b>y</b> 65:16			
<b>honestly</b> 67:24	<b>indicate</b> 11:20			
<b>horizontal</b> 66:3,9,15,22				
				11:25 13:4,6



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March 16, 2011

87

23:7 27:23 31:17 32:6 <b>joined</b> 59:7 <b>JORDAN</b> 4:21 5:12 <b>JOSEPH</b> 1:9 2:5 <b>jotted</b> 37:8 <b>judge</b> 7:12,15 <b>just</b> 6:24,25 7:18, 20 8:21 10:2, 24 12:11 14:2 24:17 27:16 29:3,18 37:22 39:20 41:16 43:10,23 44:10 47:18 49:12 50:4,5, 19 54:20,24 55:21 56:6, 18,20 58:22 60:23 61:18 65:9,14,24 66:18 68:24 69:6,20 72:7 <hr/> <b>K</b> <hr/> <b>KANE</b> 1:5 <b>Keena</b> 34:12 <b>keep</b> 12:14 35:12 43:12 67:18 <b>keys</b> 71:13 <b>kids</b> 20:25 <b>kind</b>	11:14 17:16 18:10 47:14 54:22 56:13 <b>knee</b> 66:14 <b>Knipe</b> 33:13 <b>know</b> 6:25 7:19 10:2 12:9,23 13:16,20 16:6,16 19:20 22:7 23:25 25:14,16 26:2,20 29:8 30:23 31:2 32:6,8,10, 13,16,18,24 33:2,4,6,21, 23 34:13 35:4,14 39:13,17 41:22 42:8 43:25 46:7 50:6,22 52:3, 12 53:23 57:14 58:7 61:9 63:6 66:2 68:7 70:21 73:3, 14,15 <b>knowledge</b> 15:24 16:3 31:5,20 34:5, 8,14 39:9,14 43:7 51:8 61:25 62:2 <b>knows</b> 69:12 <b>KOGUT</b> 1:3 4:4 8:4 35:20 42:14 43:7 44:13,20 <b>KOZIER</b>	2:17 <hr/> <b>L</b> <hr/> <b>ladies</b> 71:15 <b>ladies'</b> 71:25 <b>Lakeview</b> 17:10,12 51:17 60:16 70:14,24 <b>Lakeville</b> 19:8 <b>last</b> 36:10,11,12, 13,15 39:2 42:12,25 48:24 62:15 69:3 72:8 73:8 <b>late</b> 15:15 25:8,14 36:10,12,13 39:2 42:12 48:24 57:9 62:15,16,23 <b>later</b> 7:16 24:3,22 25:2 31:9 40:16 43:16 47:4 59:2 <b>Lavan</b> 3:8 5:14 76:7,22 <b>LAWRENCE</b> 1:7 <b>lawsuit</b> 8:2 34:18 50:2 <b>lawyer</b> 35:19 <b>lead</b> 42:13	<b>learned</b> 13:3 23:10 <b>least</b> 16:3 57:24 62:5 <b>leave</b> 40:18 48:15 57:12 <b>left</b> 15:13,14 59:8 75:9 <b>leg</b> 20:18,19 29:19 47:25 55:4 56:21 66:9 72:3 <b>legal</b> 5:13 <b>legs</b> 68:25 <b>license</b> 24:3 50:23 51:3 <b>lighter</b> 66:14 <b>Likewise</b> 68:22 <b>LIMANI</b> 4:20 5:23 7:7,8 64:10 65:17 67:6 69:3 <b>lines</b> 66:4,9,16, 21,22 <b>Lisa</b> 10:15 <b>list</b> 32:4 34:10, 13,15 <b>literally</b> 56:20	<b>litigation</b> 63:8 <b>little</b> 6:19 18:19 41:16 59:24 68:5,7,8 <b>live</b> 8:24 9:4,6 40:5 <b>living</b> 9:10 10:9,11 12:24 <b>LLP</b> 3:7 4:3,8 <b>location</b> 18:7,13 70:21 <b>long</b> 16:13 18:2,21 19:20 35:11 47:22 50:12 57:9 72:4 <b>look</b> 11:19 14:18, 23 17:18 19:15 20:5 27:19,20,21 28:13,18 30:17 62:21 64:18 67:5,19 68:5,7,20 <b>looked</b> 50:7,21 59:21 64:20 65:6 <b>looking</b> 69:13 70:23 <b>looks</b> 11:22,24 15:8 18:19,25 25:21 50:11 <b>LORI</b> 3:4 5:6 6:3, 10,15 9:20
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March 16, 2011

88

14:18 71:14 77:18 78:24 79:25 <b>LORNA</b> 4:13 <b>lot</b> 20:24,25 58:22 63:22 73:15 <b>LOUIS</b> 4:19 5:20 49:25 <b>lower</b> 15:13,14 <b>LULLO</b> 2:2 4:9 <b>Lynbrook</b> 24:10 40:6,7 43:17 52:18, 19 53:3 71:13 <hr/> <b>M</b> <hr/> <b>Maggie</b> 33:8 <b>maiden</b> 6:11,14 <b>mainly</b> 48:18 71:24 <b>making</b> 56:8,13 <b>Male</b> 36:21,22 <b>Malverne</b> 10:10,11 70:3,6 <b>March</b> 3:2 5:10 10:4 76:19 <b>mark</b> 63:23 64:3 <b>marked</b> 5:3 11:17	14:5,20 25:20 32:2 43:11 64:15 66:19 68:2,18 69:24 <b>marketing</b> 9:11 <b>marriage</b> 76:16 <b>married</b> 6:11,13 9:22 <b>MARTINO</b> 1:10 2:9 <b>Mary</b> 38:11 44:5,7, 9 49:4,5 61:23,24 <b>match</b> 28:23 <b>matched</b> 30:19 <b>material</b> 53:25 54:24 <b>math</b> 9:25 10:5 <b>matter</b> 3:6 5:7 11:3 24:5 46:5 76:17 77:9 <b>mean</b> 27:9 28:20 41:18 42:3 50:11 53:20 59:25 65:25 <b>Meaning</b> 54:16,19,20 70:10 <b>means</b> 62:25 <b>meet</b> 39:11 62:18 <b>meeting</b> 37:13,14	38:4,7,23 42:21 43:4,5 45:13 47:2 57:17 63:5 <b>MELISSA</b> 2:2 4:9 <b>members</b> 30:10 <b>memory</b> 8:23 15:19 20:24 21:24 25:22 27:16 36:10 37:21 38:25 69:14 71:3,21 72:2 73:20 <b>men</b> 45:4,18 <b>mental</b> 56:8,13 <b>mentioned</b> 38:17 45:13, 17 61:23 65:20 <b>Merrick</b> 52:20 <b>met</b> 6:21 37:15 38:18 39:10 42:11 43:13 46:20 62:25 <b>MICHAEL</b> 1:13 2:13 4:16 32:8,16 <b>mid</b> 67:9 <b>military</b> 15:17 <b>MILTON</b> 1:11 2:7 <b>mind</b> 6:8 40:9	43:23 44:10 67:18 <b>Mineola</b> 3:7 4:5,15 5:9 <b>minute</b> 49:16 <b>minutes</b> 5:22 37:15 38:5,19 <b>missing</b> 14:22 25:10, 23 61:11 <b>model</b> 11:15 68:6 <b>month</b> 10:3 13:9 62:17 <b>months</b> 36:15 <b>morning</b> 5:19 49:24 <b>mostly</b> 59:2 <b>mother</b> 10:12 26:21 45:24 48:19 <b>mother's</b> 39:21 <b>movie</b> 52:21 <b>MUMMERT</b> 4:21 5:12 <b>murder</b> 38:15 <b>myself</b> 41:18 <b>mystery</b> 43:16 <hr/> <b>N</b> <hr/> <b>N</b>	4:2 75:2 <b>NADJIA</b> 4:20 5:22 65:17 <b>name</b> 5:12 6:8,11, 12,14 17:13 32:7 36:25 39:7 49:24 61:24 71:7 <b>named</b> 25:9 <b>names</b> 17:14 44:2 48:11 <b>names..</b> 40:13 <b>NASSAU</b> 1:5 2:5 4:14 5:8,21 8:6,13 14:16 27:14 28:13,16,25 30:3 31:8,15, 20 32:3,10, 13,18,21 34:17,20,25 35:5,11,15 36:6,8,17,23 38:22 39:9,14 42:11 43:5 45:10 46:21 47:3,9,19 49:25 67:12, 13 69:25 73:11,19 77:4 <b>near</b> 70:25 <b>need</b> 37:20 49:12 50:3,4 <b>needed</b> 30:18 <b>neither</b>
---	---	--	--	--



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March 16, 2011

89

17:15	<b>note</b>	61:19,21	66:21 71:23	63:9
<b>NEUFELD</b>	39:6 56:8,13	63:22	<b>order</b>	<b>Pardon</b>
4:8 5:18	<b>noted</b>	<b>offer</b>	10:17 63:25	55:2
<b>neutral</b>	74:7	77:13	<b>original</b>	<b>parents</b>
62:19,20	<b>notes</b>	<b>office</b>	32:3 43:12	63:15
<b>never</b>	37:20	5:23 62:18	<b>outcome</b>	<b>parked</b>
64:12	<b>nothing</b>	<b>officer</b>	76:17	13:23 70:13,
<b>NEW</b>	49:7 69:19	69:25 73:11,	<b>outside</b>	25
1:2 3:7,9	73:7,24	19	21:3 31:22	<b>Part</b>
4:5,10,15	<b>noticed</b>	<b>offices</b>	55:14 69:16	27:9 35:5
5:10 14:16	23:5	3:6	72:22	41:13 63:7
70:12 76:3,4,	<b>November</b>	<b>Okay</b>	<b>over</b>	<b>partially</b>
8	9:19,24 10:21	7:19 8:21	12:2 22:6	29:18
<b>Newsday</b>	11:9,11 12:21	11:5,11 14:11	<b>P</b>	<b>particular</b>
5:3 42:20,25	13:2,7,8	15:18 22:14		67:2
62:22 63:8	15:15 36:11	24:8 40:17	<b>P</b>	<b>parties</b>
75:5	70:10	42:4 64:22	4:2	76:15
<b>Newsday.com</b>	<b>number</b>	66:6 67:6,20	<b>P.O</b>	<b>passed</b>
43:15	5:6 13:21	<b>Old</b>	1:13,14	34:9,10
<b>newspaper</b>	24:4 40:3	3:7 4:4 5:9	<b>page</b>	<b>passenger</b>
62:21	41:6	9:24 10:21,24	1:17 11:19	71:18
<b>night</b>	<b>numbers</b>	57:4	14:6,9,10,	<b>pattern</b>
16:3	41:12	<b>older</b>	11,15,17,19,	48:2
<b>No.Change</b>	<b>O</b>	10:19 11:6	22,24 17:19,	<b>PD</b>
78:2,5,8,11,	<b>oath</b>	<b>Oldsmobile</b>	20 75:4 78:2,	71:13,14
14,17,20	6:17 77:13	70:11	5,8,11,14,	<b>PENALTY</b>
79:2,5,8,11,	<b>objection</b>	<b>once</b>	17,20 79:2,5,	77:6,7
14,17,20	7:11,13 43:2	19:6 21:14	8,11,14,17,	<b>people</b>
<b>No.Line</b>	58:18 63:19	41:2 58:5	20	31:16 32:5
78:2,5,8,11,	<b>objections</b>	<b>ones</b>	<b>pages</b>	33:21 34:15
14,17,20	7:14	27:21 64:20	42:20	36:19 41:24
79:2,5,8,11,	<b>obvious</b>	<b>online</b>	<b>pair</b>	<b>PERJURY</b>
14,17,20	66:7	43:21	20:10,12,24	77:6,7
<b>Nodding</b>	<b>Obviously</b>	<b>open</b>	28:5,10	<b>perpendicula</b>
57:11	40:3	40:18	47:10,14,15	<b>r</b>
<b>non-party</b>	<b>occasions</b>	<b>opinion</b>	67:2 71:15	64:25
3:5	62:5,7	15:8 46:9,12	<b>pants</b>	<b>PERRINO</b>
<b>Nope</b>	<b>Ocean</b>	58:20	20:10,12,13,	2:17
31:4,6 34:4	70:14	<b>opportunity</b>	14,17,24	<b>person</b>
38:24	<b>odd</b>	7:5 8:14	37:23 48:3	21:20 53:11
<b>Notary</b>	18:3 21:12	40:23	67:24	56:12 57:8,
3:8 76:7		<b>opposed</b>	<b>paper</b>	
			37:9 39:5	



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March 16, 2011

90

12,20 60:12 61:24 62:8,10 69:7 <b>personal</b> 41:23 <b>persons</b> 57:3 <b>pertinent</b> 8:11 <b>phone</b> 41:9,11 49:6 62:7,9 <b>photo</b> 65:7 <b>photograph</b> 18:5,17,24 19:3 65:21 66:20 68:25 <b>photographs</b> 11:18 17:18 64:5,15,18 65:11,12 75:7 <b>physically</b> 59:6 <b>pick</b> 17:5,8,23 18:15 19:8 71:4 <b>picked</b> 71:9 <b>picture</b> 50:7 67:2,19 68:4 <b>pictures</b> 11:20 43:20 <b>piece</b> 37:8 39:5 61:17 <b>pinstripes</b> 72:19,21 <b>place</b> 17:22 37:13	62:19,20 <b>plain</b> 26:13 <b>Plaintiff</b> 1:4 <b>Plaintiff-</b> <b>John</b> 4:4 <b>Plaintiffs</b> 2:4 5:19 42:14 46:4,10 <b>plaintiff's</b> 50:15 <b>Plaintiffs-</b> <b>John</b> 4:8 <b>plate</b> 24:3,7 50:23 <b>plates</b> 23:5,6,8,11, 15,16,20,24 24:9 <b>platform</b> 53:8,10 <b>please</b> 5:15 17:18 18:5 20:11 49:16 <b>point</b> 25:24,25 51:14,23 <b>POLICE</b> 1:5,6 13:18, 19 15:22 19:9,18 21:14,20 22:18 23:12, 14 24:11,24 26:8 30:4 34:25 35:5, 11,15 38:23 41:15 43:5	45:10 50:17 51:9,20 52:6, 8,9,14 53:3 60:20,25 61:3,4,8 65:13 67:12 73:19 <b>popular</b> 54:11 56:25 <b>possible</b> 45:9 <b>Possibly</b> 25:17 61:16 <b>poster</b> 25:23 <b>practice</b> 12:13,16 <b>precinct</b> 52:23 53:14 <b>precise</b> 47:15 <b>pre-marked</b> 75:5 <b>prepared</b> 8:18 <b>present</b> 4:17,18 5:22 70:2 <b>preserve</b> 7:25 8:15 <b>preserved</b> 7:14 <b>presume</b> 70:12 <b>previous</b> 52:12 <b>previously</b> 9:15 11:17 14:5 25:19 31:25 64:8 69:24	<b>print</b> 43:21,22 66:13 <b>printed</b> 67:11 <b>printing</b> 45:3 65:2,22 66:3,15 67:4 <b>prior</b> 42:21 43:25 44:3 64:13 71:14 <b>prison</b> 44:14 <b>probably</b> 24:21 25:6 26:21 39:2 41:19 <b>problem</b> 51:25 <b>process</b> 6:20 41:13 <b>processing</b> 34:22 <b>prod</b> 59:23 <b>PRODUCTION</b> 75:8 <b>professional</b> 59:12 <b>professional</b> <b>ly</b> 53:12 57:21 58:10 <b>protocol</b> 61:10 <b>provided</b> 32:2 <b>proving</b> 8:16 <b>Public</b>	3:9 76:8 <b>pull</b> 54:2 <b>pulled</b> 24:5 43:13 <b>purpose</b> 7:21,23 66:20 <b>purposes</b> 6:25 8:16 <b>put</b> 11:19 22:5 30:24 60:19 65:9 <hr/> <b>Q</b> <hr/> <b>question</b> 7:2 13:5 16:18 33:2 34:24 43:3 44:17,18 46:13 47:24 50:3,24 55:22 65:18 68:3 73:8 <b>questioning</b> 50:14 <b>questions</b> 6:23 7:5,17 8:22 10:22,25 27:10,11,13, 18 29:4,5,8 30:22 37:17 38:3 40:3 49:9,11 58:21,22 59:3 68:19 72:6,8, 9 73:16 <b>quick</b> 37:7 <hr/> <b>R</b> <hr/> <b>R</b> 4:2 76:2 <b>railroad</b>
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March 16, 2011

91

18:8 70:25 71:10 <b>raised</b> 53:8,10 <b>ran</b> 64:6 <b>rape</b> 38:14 <b>reaction</b> 21:4,9 60:2,5 61:7 <b>read</b> 43:21,23 44:19 62:23 63:17 77:8,9 <b>reading</b> 42:24 44:10 <b>realize</b> 23:2 <b>realized</b> 16:14 22:23 23:3 <b>really</b> 29:3,10 45:23 47:5 65:5 <b>rear</b> 71:17,23 <b>reason</b> 7:24 38:9 50:5 78:4,7, 10,13,16,19, 22 79:4,7,10, 13,16,19,22 <b>recall</b> 11:15 12:5,6, 25 13:9 17:11,13 19:25 20:20 21:17 26:6,12 27:18 28:15, 20 29:10,19 35:13,14,18	36:4,25 42:16,23 45:16 46:2,14 47:6,9,13, 16,25 48:4,11 51:9,25 52:5, 15,16,22 53:11 55:6, 13,15,17,19 56:12,14,22 58:9 59:11, 12,23,24 60:7,20,24 63:6,10 67:24 68:11 72:3, 12,20,23 73:2,13,17, 18,23 <b>recalled</b> 37:23 <b>receive</b> 8:17 <b>Recess</b> 49:19 <b>recognize</b> 11:21 15:3 17:20 18:7 <b>recognized</b> 47:20 <b>recollection</b> 53:17 54:9 55:8 56:7 60:2 63:11 64:19 65:4,8 69:17 71:19 72:15,24 <b>record</b> 6:9 7:14 8:16 44:8 49:18,21 65:10,25 67:14 68:24 74:6 76:12 <b>Recovery</b>	14:17 <b>Redlefsen</b> 32:24 <b>reference</b> 42:22 <b>referenced</b> 43:14 <b>referencing</b> 63:4 <b>referring</b> 43:18 59:15 66:4 <b>reflecting</b> 44:19 73:20 <b>refresh</b> 15:19 64:19 65:8 <b>refreshed</b> 69:14 <b>refreshes</b> 65:4 <b>regarding</b> 24:24 46:22 50:24 <b>registered</b> 23:6 <b>registration</b> 70:12 <b>related</b> 8:7 76:15 <b>relating</b> 72:8 <b>relation</b> 36:6 <b>released</b> 45:2 <b>remember</b> 14:3 20:2 24:3 27:9 28:20,22 48:2 49:5 58:15,22	59:2,20 63:4 <b>repaired</b> 24:16 <b>repeat</b> 34:23 <b>rephrase</b> 16:18 <b>report</b> 14:15,17,20, 22 15:11 69:25 70:9 71:12,24 73:4 <b>reported</b> 61:11 <b>reporter</b> 5:13 6:21 <b>reporting</b> 15:23 <b>represent</b> 49:25 <b>represented</b> 8:4 <b>representing</b> 5:21 <b>REQUESTS</b> 75:8 <b>require</b> 9:12 <b>research</b> 67:7 <b>resembled</b> 48:5 <b>respect</b> 66:19 68:4,22 69:15 <b>restate</b> 13:5 <b>RESTIVO</b> 2:2 4:8 5:7, 18 8:3 35:20 42:15 43:8	44:13,21 77:4 <b>returned</b> 25:13 35:9,12 <b>RICHARD</b> 2:11,20 <b>right</b> 8:19 10:8,23 12:2 14:25 19:5,14 24:21 28:11 42:21 45:5 50:11 51:18,19 52:20 53:9,10 54:8,25 57:2, 5 59:4 66:11 71:17,18,23 <b>right-side-</b> <b>out</b> 56:21 <b>ripped</b> 29:16 <b>Road</b> 3:7 4:4 5:9 17:13,17 18:9 19:8 52:20 70:25 71:8 <b>ROBERT</b> 1:10 2:6 <b>ROE</b> 2:20 <b>room</b> 7:9 21:23 26:25 27:3,5 58:25 <b>Rough</b> 62:16,17 <b>roughly</b> 56:16 <b>RPR</b> 76:22 <b>rule</b> 30:18
---	--	--	--	---



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March 16, 2011

92

<b>ruling</b> 7:13,16	1:7 2:19	<b>SHARKEY</b> 2:16	<b>E</b> 78:23 79:24	69:9 70:8
<b>run</b> 66:21	<b>seat</b> 29:23,24,25 30:2 60:8,13 71:18,20,22, 24 72:25	<b>SHEET</b> 77:1,12 78:1 79:1	<b>signed</b> 73:14 77:15	<b>sought</b> 11:4
<b>s</b>		<b>SHIELD</b> 2:19	<b>signs</b> 25:17	<b>sound</b> 32:7 53:9 54:18
<b>S</b> 4:2	<b>second</b> 14:6,10,11, 17,22	<b>short</b> 49:12,13 70:11	<b>silly</b> 54:18	<b>sounding</b> 37:5
<b>sales</b> 9:11	<b>sed</b> 70:11	<b>shoulder</b> 17:16	<b>similar</b> 11:22,24 38:11	<b>sounds</b> 37:12
<b>sample</b> 27:19 47:10 48:8 59:18	<b>sedan</b> 70:12	<b>show</b> 11:16 14:4 28:3 43:10 64:5,19 68:17,25 69:23	<b>SIRIANNI</b> 1:12 2:7	<b>source</b> 43:6 65:10 67:7
<b>samples</b> 27:24 28:2, 12,17 30:4 31:7,21 32:11,19 33:10 47:8 48:10,24 58:13 59:19	<b>see</b> 14:24 15:10, 14 19:19 22:5 29:12 37:20 44:18 60:16 64:18 65:3 66:11,12 67:4	<b>showed</b> 27:24 28:13, 18 47:10,20 48:4 59:18	<b>sister</b> 71:14	<b>southwest</b> 70:13
<b>save</b> 77:10	<b>seeing</b> 20:20	<b>Showing</b> 25:19 31:25 72:21	<b>sit</b> 24:2 47:17 55:16 65:6	<b>space</b> 40:18 75:9
<b>saw</b> 39:20 55:11 56:2 59:10 60:2,7	<b>seek</b> 16:4	<b>shown</b> 50:8	<b>sitting</b> 53:7 73:18	<b>speak</b> 21:16 42:9
<b>saying</b> 46:14 47:16 59:9	<b>seen</b> 25:22	<b>shy</b> 56:6	<b>six</b> 36:15	<b>specific</b> 65:21
<b>says</b> 15:16 32:4 63:3	<b>send</b> 40:22 41:2	<b>siblings</b> 10:12,13,14	<b>size</b> 55:20 56:15, 17,18	<b>specifically</b> 16:7 17:11
<b>ScalPELLi</b> 33:8	<b>separate</b> 46:5	<b>side</b> 7:11 8:10,14 19:7 55:19 72:19	<b>skinny</b> 69:11	<b>specificity</b> 59:21
<b>SCHECK</b> 4:8 5:18	<b>sequence</b> 18:18	<b>sign</b> 73:12,16,22	<b>small</b> 63:13	<b>speculation</b> 63:20
<b>scheduled</b> 9:15	<b>SERGEANT</b> 2:18	<b>signature</b> 14:24 15:4,5, 9	<b>smaller</b> 56:12	<b>spent</b> 31:17
<b>Schembri</b> 44:9	<b>series</b> 64:14 66:8 72:8 75:6	<b>SIGNATUREDAT</b>	<b>So..</b> 33:7 64:6	<b>SPILLANE</b> 1:7 2:20
<b>SEAN</b>	<b>Serio</b> 3:7 4:3		<b>somebody</b> 23:8 53:7	<b>spoke</b> 32:14,22 33:5 49:5
	<b>set</b> 38:7 68:18 76:11,19		<b>somewhat</b> 59:2	<b>spoken</b> 62:4
			<b>sorry</b> 21:5 22:8,13 27:2 34:23 58:8 63:14	<b>SS</b> 76:3
				<b>stains</b> 29:14



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March 16, 2011

93

<b>State</b> 3:9 9:13,17 76:3,8	54:24 67:22 68:8,12	<b>surviving</b> 34:15	68:13,20 69:12	38:15
<b>stated</b> 70:10 72:18	<b>striped</b> 21:6,10 26:3 65:11,15	<b>Susan</b> 33:13	<b>TAYLOR</b> 2:3 4:9	<b>thing</b> 65:19
<b>statement</b> 73:12,20	<b>stripes</b> 20:20,22 21:2 48:3 55:10, 14,16 64:24, 25 69:15,17	<b>sworn</b> 5:25 6:4 7:25 76:11	<b>teen-age</b> 25:9	<b>things</b> 73:14
<b>STATES</b> 1:2	<b>stating</b> 6:8	<b>T</b> 70:3,4 76:2	<b>teenagers</b> 60:10	<b>think</b> 12:18 21:2 23:2,3 25:4, 6,17 30:24
<b>station</b> 19:9,18 21:14 22:18 23:14 51:10 52:6,8, 9,14 53:3 60:21,25 61:3,4,8	<b>stuff</b> 12:12	<b>take</b> 7:18,25 8:15 17:18 19:15 30:16,21 31:21 34:21, 25 37:13 48:24 49:15 60:25 62:17 68:10	<b>tell</b> 13:22,25 16:20 21:7 23:19 24:6 28:16 30:15, 20 37:24 47:19 48:7 55:25 59:7 69:5	31:18 36:12, 24 37:22 38:11 39:20, 21 42:20 43:19 45:19, 23 50:8 51:10 52:21 55:16, 17 57:14 62:5,22 66:7 71:11
<b>steering</b> 52:2	<b>subject</b> 11:3	<b>taken</b> 31:7 49:19 51:2 77:8	<b>telling</b> 44:11 47:9,13	<b>thinking</b> 59:24 60:7 61:15
<b>stitching</b> 55:18	<b>suggest</b> 45:2	<b>takes</b> 12:10	<b>testified</b> 6:5 55:10 58:24 59:14, 20	<b>third</b> 14:19 62:9
<b>stolen</b> 11:2 13:9,11, 15,17,23 14:2 15:20,23 16:14 49:3 50:16 61:6 70:15,19	<b>suggesting</b> 44:13	<b>taking</b> 43:23 47:7 61:2,3	<b>testify</b> 39:19	<b>THOMAS</b> 2:11 33:17 34:12
<b>stop</b> 50:5	<b>suite</b> 5:9	<b>talk</b> 28:25 35:25 39:15 41:14	<b>testimony</b> 6:16 7:25 8:15 11:4 68:11 76:13	<b>thorough</b> 58:16 59:11
<b>stores</b> 67:8	<b>suits</b> 26:16	<b>talked</b> 39:18 50:15, 16	<b>Thank</b> 8:20 15:10 19:5 22:12 31:14 42:10 61:5 67:15 72:5 74:3	<b>thought</b> 43:19 63:12 65:7
<b>Street</b> 4:10,14 40:13 71:7	<b>SUPERVISORS</b> 2:21	<b>talking</b> 50:19 56:9, 10,25 57:17	<b>theater</b> 52:21	<b>three</b> 42:14 44:22 45:4,18,20 46:3
<b>stretch</b> 53:21	<b>supporting</b> 14:19	<b>tall</b> 56:5	<b>theft</b> 24:12	<b>thrift</b> 67:8
<b>stretchy</b> 20:13,14,15 47:25 53:16, 17,19,25	<b>supposed</b> 41:11	<b>tape</b> 5:5	<b>Theresa</b> 25:9,23 26:5 30:25 31:2	<b>time</b> 6:23 7:6,10, 17 10:8 12:24 13:3,21 15:16,17
	<b>sure</b> 11:23 12:20 16:10 18:3 26:15 40:14, 23 41:18 47:18,22 48:19 50:9,18 65:2,5	<b>tapered</b>		



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March 16, 2011

94

16:14,15 17:3 18:2,21 22:22 23:22,23 24:15,22 30:3 31:17 34:20 35:8 36:5 39:7 45:3,16 47:23 48:20 49:8,17,20 50:12 53:2,3 54:12 56:16, 23 59:17,25 60:10,15,17 61:9,15 72:4 74:5,7 <b>times</b> 49:6 58:7,25 <b>timing</b> 36:13 <b>Today</b> 8:25 11:4 17:14 37:25 39:19 40:16 47:17 52:16 53:24 56:7 58:24 64:13 65:6 <b>today's</b> 69:11 <b>together</b> 10:5 30:24 <b>told</b> 22:18 36:16 37:25 39:22, 24 45:10 47:14 <b>Tony</b> 8:4 22:8 <b>top</b> 66:25 67:4 <b>torso</b> 66:10 <b>touch</b>	34:2,6 <b>towards</b> 58:21 <b>towers</b> 34:12 <b>town</b> 8:24 <b>track</b> 71:10 <b>tracks</b> 71:2 <b>transcript</b> 8:18 40:21 75:9 77:8 <b>transcriptio</b> <b>n</b> 6:25 40:24 <b>trash</b> 12:14 <b>travel</b> 9:12 <b>true</b> 66:12 76:12 77:10 <b>try</b> 15:25 16:5,7 41:14 <b>trying</b> 25:4 36:12 39:20 55:16 <b>turn</b> 14:6,9 18:5 <b>turned</b> 53:4 <b>Turning</b> 9:19 14:21 18:17 24:9 36:9 <b>twice</b> 58:6 <b>twin</b>	34:11 <b>two</b> 24:20 30:24 62:5,9 <b>type</b> 28:14,18 47:20 <b>types</b> 65:11 <b>typical</b> 60:9 <hr/> <b>U</b> <hr/> <b>Uh-huh</b> 15:2 20:6 30:7,9 45:15 62:6 70:5,8 <b>unable</b> 9:16 <b>uncomfortabl</b> <b>e</b> 41:17,23 <b>under</b> 6:16 29:24 71:18,24 77:6,7,13 <b>understand</b> 6:24 45:20 46:13 59:9 <b>understandin</b> <b>g</b> 38:13 42:17 46:10 70:18 77:12 <b>unfortunatel</b> <b>y</b> 37:3 <b>uniform</b> 26:13 <b>UNITED</b> 1:2 <b>upset</b>	13:12 <b>use</b> 7:22 8:2 <hr/> <b>V</b> <hr/> <b>v</b> 77:4 <b>vandalized</b> 19:22,23,24 <b>various</b> 65:11 67:8 <b>vehicle</b> 11:21 <b>Vehicle/Boat</b> 14:16 <b>verbatim</b> 13:14 22:2 <b>version</b> 69:11 <b>versus</b> 5:7 68:8 <b>vertical</b> 64:25 66:21 <b>Videographer</b> 4:21 5:5,13, 24 6:22 49:17,20 74:5 <b>VIDEOTAPED</b> 3:4 5:6 <b>view</b> 18:12 <b>viewing</b> 65:7 <b>VINCENT</b> 2:12 <b>vintage</b> 67:10 <b>visit</b> 31:8,10,13 <b>voicing</b> 7:11	<b>VOLPE</b> 1:9 2:5 <b>vs</b> 1:4 2:4 <hr/> <b>W</b> <hr/> <b>waist</b> 66:12,13 <b>wait</b> 7:2 <b>walked</b> 53:7 <b>WALTMAN</b> 1:13 2:8 <b>WANE</b> 1:11 <b>want</b> 9:25 50:5 <b>wanted</b> 30:20 <b>Washington</b> 32:6 <b>wasn't</b> 19:21 50:13 61:2 <b>way</b> 16:9 31:3 47:18 76:17 <b>WAYNE</b> 2:14 <b>week</b> 24:20 <b>we'll</b> 14:7 40:17,22 50:6 <b>went</b> 22:18 43:13 44:22 52:8 53:2 60:16 61:12 70:23 <b>we're</b> 7:24 49:18,21
--	---	--	---	---



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March 16, 2011

95

56:9,10,24 59:15 66:3 74:6 <b>weren't</b> 21:12 50:9 54:21 61:14, 15,18 <b>West</b> 4:14 <b>we've</b> 11:4 <b>Whatever</b> 13:20 46:16 52:13 <b>whenever</b> 48:22 <b>WHEREOF</b> 76:18 <b>Whereupon</b> 5:2 6:2 7:8 21:22 <b>whether</b> 12:6 39:10,24 44:12 47:18 55:13 65:12, 14 69:15,16 72:20 73:3,5, 21 <b>Whoever</b> 21:18 35:3 <b>WILLET</b> 1:6 <b>WILLIAM</b> 1:6,14 2:15 <b>windshield</b> 12:17 20:3 <b>withdrawn</b> 16:18,19 20:4 21:5 <b>within</b> 24:19 36:15 76:8	<b>witness</b> 3:5 5:24 7:20 8:10,20 22:8, 11,13 31:13 41:14 44:15, 16 64:6 69:5 75:10 76:10, 13,18 <b>witnesses</b> 8:12 <b>Woodfield</b> 70:25 71:8 <b>words</b> 50:18 55:21 <b>work</b> 9:8,12,17 <b>working</b> 12:21 36:17 <b>works</b> 62:3 <b>worn</b> 60:9 <b>wouldn't</b> 41:20 <b>Wren</b> 32:16 <b>write</b> 58:8 73:20 <b>written</b> 37:2 57:16 <b>wrong</b> 23:11 24:9 37:6 <b>wrongful</b> 8:8 <b>wrote</b> 37:7 57:15 <hr/> <b>X</b> <b>X</b> 75:2	<hr/> <b>Y</b> <b>Yeah</b> 7:23 18:4 29:19 38:6 39:4 53:13 58:17 60:18 63:21,25 68:5,20,23 69:5 72:18 <b>year</b> 10:3 20:24 36:10,11,12, 13 39:2,3 42:12,25 48:24 62:15 <b>years</b> 8:13,23 11:6 12:2 24:2 57:4 <b>YORK</b> 1:2 3:8,9 4:5,10,15 5:10 14:16 70:13 76:3,4, 8 <b>youngest</b> 10:18 <b>yourself</b> 5:16 55:23 <hr/> <b>1</b> <b>1</b> 5:6 <b>10</b> 70:11 <b>10013</b> 4:10 <b>1024</b> 5:11 <b>10th</b> 15:15 <b>11/18/84</b> 70:23	<b>1-10</b> 2:21 <b>1115</b> 49:17 <b>1120</b> 49:20 <b>1125</b> 15:17 <b>114</b> 3:7 4:4 5:9 <b>1149</b> 74:5,7 <b>11501</b> 4:5,15 <b>1-5</b> 1:14 <b>16</b> 3:2 5:10 10:6 50:25 51:3,7 57:4 <b>161</b> 69:24 70:22 73:4 <b>164</b> 32:2 34:15 <b>166</b> 14:5,14 <b>168</b> 25:20 <b>169</b> 11:17 17:19 50:9 <b>1971</b> 70:11 <b>1984</b> 8:13 9:19,24 10:21 11:9, 11,25 12:21 13:2 15:15 24:22 25:8 34:16 35:16,	21 36:2 47:19 48:22 50:25 51:6 57:23 70:2,11 73:13 <b>1985</b> 1:8 8:14 35:16 <b>1986</b> 35:21 36:2 <hr/> <b>2</b> <b>20</b> 77:15 <b>2003</b> 45:2 <b>2005</b> 1:6,9 <b>2010</b> 43:17 45:6 48:25 62:16, 23 63:3,9 <b>2011</b> 3:2 5:10 63:9 76:19 <b>21</b> 11:8 <b>2130</b> 70:15 <b>2305</b> 70:15 <b>2325</b> 15:16 <b>25</b> 12:2 45:6 63:3 <b>258</b> 5:2 43:11 62:24 75:5 <b>259</b> 64:2,4,14,23 66:20 67:19 68:23 69:14
---	---	---	--	--



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96

75:6	75:7	
<b>25-plus</b>	'	
20:24		
<b>25th</b>	<b>'68</b>	
43:17 76:19	10:4	
<b>260</b>	<b>6</b>	
64:4 68:2	<b>69</b>	
<b>261</b>	75:12	
64:4 68:18	<b>6th</b>	
<b>262</b>	70:2	
64:4,14	<b>7</b>	
68:22,25	<b>72</b>	
69:14 75:6	75:14	
<b>3</b>	<b>73</b>	
<b>318507</b>	75:13	
77:3	'	
<b>4</b>	<b>'80s</b>	
<b>4</b>	67:9	
75:12	<b>'84</b>	
<b>40</b>	13:7 25:14	
75:9	47:4	
<b>420</b>	<b>'85</b>	
5:9	25:14 34:16	
<b>48</b>	51:6 73:13	
2:19	<b>9</b>	
<b>49</b>	<b>99</b>	
75:14	4:10	
<b>5</b>		
<b>5</b>		
75:5		
<b>5233</b>		
70:12		
<b>58</b>		
70:3,6		
'		
<b>'63</b>		
11:5		
<b>6</b>		
<b>64</b>		



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